IN THE SUPREME COURT OF THE UNITED STATES

WILLIE E. BOYD,
Appellant-Petitioner,

v.

FRANCISCO QUINTANA, Warden,
Appellee-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Willie E. Boyd
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QUESTION PRESENTED

Whether the decision of the Sixth Circuit is in conflict with United States v. Hayman, 342 U.S. 205 (1952), were the Appellate Court has made 28 U.S.C. § 2241 only available based on new evidence that only proves "actual innocence", even though the federal prisoner has demonstrated that the 28 U.S.C. § 2255 is "inadequate or ineffective" to bring a 5th Amendment Constitutional Due Process claim, under Brady and shows new evidence that undermines confidence in the verdict.

Based on the rulings of the lower courts the question must be asked, has the Habeas Corpus under U.S. Const. Art. 1, § 9, cl. 2, been suspended for federal prisoners, who raise Fifth Amendment due process violations under Brady" and its progeny. Where the government has suppressed the evidence, only to be discovered though due diligence, after the petitioner's direct appeal, and after his initial § 2255, and the standard for taking a second or successive petition, pursuant to 28 U.S.C. § 2255(h), (1) and (2), does not allow for a federal prisoner to take a "Brady" claim.

This Court's resolution of this matter would give guidance on the issue: As to when is the "escape hatch" is to be utilized by federal prisoners under 28 U.S.C. § 2255(e), where he has no venue to have the Constitutional Question addressed on the merits, where he has proven that the § 2255 is "inadequate or ineffective" to test the legality of the federal prisoner's detention. Where as

in this case, clearly there stands the question of the violation of a Fifth Amendment Constitutional right, and petitioner has no court to turn to, and the government stands rewarded for successfully suppressing hundreds of pages of investigative documents in the case.

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The opinion of the district court denying the Rule 59(e) motion. **See: Appendix-B.**

The opinion of the Sixth Circuit Court of Appeals affrming the district court opinion. **See: Appendix-C.**

The opinion of the Sixth Circuit Court of Appeals denying the petition for rehearing or rehearing en banc. **See: Appendix-D.**

JURISDICTION OF THE COURT

The Sixth Circuit Court of Appeals decided the case on July 16, 2018. **See: Appendix-C.**

The Sixth Circuit Court of Appeals denied the petition for Rehearing or Rehearing En Banc on September12, 2018. **See: Appendix-D.**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment of the U.S. Constitution is being invoked where there has been a violation of the Due Process Clause. **See: Appendix-E.**

PROCEDURAL HISTORY OF THE CASE

1. On March 28, 2017 petitioner's § 2241 habeas corpus petition was filed, and assigned Boyd v. Quintana, No. 5:17CV00151(DRC), in light of the Supreme Court case Wearry v. Cain, 136 S.Ct. 1002, 194 L.Ed.2d 78 (2016), which reaffirmed the constitutional principle for habeas corpus review of a Brady claim. Which setout how courts are to review a due process violation of a Brady claim, as opposed to an actual innocence claim, stating: "To prevail on his Brady claim, Wearry need not show that he "more likely than not" would have been acquitted. Smith v. Cain, 565 U.S. 73, ____ - ____, 565 U.S. 73, 132 S.Ct. 627, 630, 181 L.Ed.2d 571, 574 (2012). He must show only that the new evidence is sufficient to "undermine confidence" in the verdict." [DN. 1], p. 7.

2. On April 7, 2017 the Clerk's Office filed Petititioner's Motion Request to Compel Disclosure of Discovery materials, Within the Physical Possession of the Government. [DN. 4].

3. On April 10, 2017 the district court denied the motion request to Compel the Disclosure of Discovery Materials, as being premature. [DN. 5].

4. On August 28, 2017 the district court sua sponte summarily dismissed the petitioner's § 2241 habeas corpus petition, on the premise, that, "[N]or do Boyd's allegations set forth a claim of "actual innocence", as they do not demonstrate or even suggest that he did not commit the crimes for which he was convicted. Accordingly, he failed to assert a claim cogniable under § 2241. Wooten v. Cauley, 677 F.3d 303, 307 (6th Cir. 2012)." [DN. 9], p. 5. **See: Appendix-A.**

5. On September 15, 2017 petitioner timely filed a Rule 59(e) motion, to alter or amend the judgment. [DN 11].

6. On September 18, 2017 the district court sua sponte summarily denied the Rule 59(e) motion, on the premise, that, "It is universisally-established that a constitutional claim such as one under Brady must be asserted -- if it can be al all -- under § 2255. It is not congnizable under § 2241. Cf. Harrison v. Quintana, No. 5:14-CV-132 2014 WL 2769108 (E.D. Ky. June 17, 2014)(holding that "challenges to the sufficiency of the evidence and allegations of prosecutorial misconduct and Brady violations are quintessential claims of trial error which a defendant can and must pursue on direct appeal or in a motion under § 2255.")(citing Graham v. Sanders, 77 F.App'x 799, 801 (6th Cir. 2003), aff'd, No. 14-5847 (6th Cir. Feb. 25, 2015); United States v. Neder, 451 F. App'x 842, 844 (11th Cir. 2012)(holding that Brady, Giglio, and prosecutorial misconduct claims do not fall within the scope of the savings clause.)" **See: Appendix-B, pp. 1-2.**

7. On October 23, 2017 petitioner filed his Notice of Appeal, under the Sixth Circuits jurisdiction, under 28 U.S.C. § 1291.

8. On November 6, 2017 petitioner filed his Appellant Brief in the Sixth Circuit Court of Appeals, No. 17-6276.

9. On July 16, 2018 the Sixth Circuit summarily affirmed the action of the district court, stating, "Boyd does not argue that he is actually innocent of his crimes. Rather, Boyd relies upon Wearry v. Cain, 136 S.Ct. 1002 (2016), to argue that the government's alleged Brady violation and his newly discovered evidence "suffice

to undermine confidence in [his] convictions." Id. at 1006. But Wearry merely discussed and clarified Brady. Wearry is not an intervening change in the law; nor does it establishes Boyd's actual innocence." **See: Appendix-C, p. 3.**

10. On August 16, 2018 petitioner filed a Motion Request for Rehearing or Rehearing En Banc.

11. On September 12, 2018 the Sixth Circuit denied the motion request for Rehearing or Rehearing En Banc. **See: Appendix-D.**

12. The petitioner's motion for writ of certiorari is timely because it has been filed within 90-days of the last denial of the Court of Appeals.

STATEMENT

Following a bench trial in the United States District Court for the Eastern District of Missouri, petitioner was convicted on 9-Counts of a 10-Count indictment. Ct. 1 Poss. W/I intent to distribute 33-grams of powder concaine, 21 U.S.C. § 841(a); Ct. 2 Ex-Felon in Poss. of a Firearm a 9mm cal firearm, 18 U.S.C. § 922(g)(1) and § 924(e); Cts. 3-4 Misuse of Social Secuity Numbers, 42 U.S.C. § 408(a)(7); Cts. 5-7 Currency Transaction Violations, 31 U.S.C. §§ 5313 and 5324; Ct. 8 Ex-Felon in Poss. of a Firearm a 357 cal. firearm, 18 U.S.C. § 922(g)(1) and § 924(e): and Ct. 10 Criminal Forfeiture, 18 U.S.C. § 982(a)(1). The petitioner had been found guilty based on circumstantial evidence due to the government's testifying law enforcement witnesses. Petitioner was sentenced based on his criminal history, as an armed career offender to 276-months imprisonment under 18 U.S.C. § 924(e). The court of appeals affirmed on July 21, 1999, in United States v. Boyd, 180 F.3d 967 (8th Cir. 1999). On June 15, 2000 petitioner filed a motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255(a). The district court denied the motion and a certificate of appealability (COA), and the court of appeals denied a COA. See: Boyd v. Uniyed States, No. 01-1671.

It must be noted, petitioner put on 10-defense witnesses at trial, Sharron Troupe, Muhammad Mateen, Eric Cole, Alonzo Wrickerson, Wilbert Harris, Jacqueline Boyd, Devon Wade, Lorre Troupe, Gerald Boyd and Willie Wise, to challenge the government's case.

The government's witnesses against the petitioner were all law enforcement officers, state and federal. The main government witnesses who testified to the material facts of the case, were DUSM Luke Adler, Deputized DUSM St. Louis Police Officer Joseph Kuster, and former rogue St. Louis Police Officer Bobby Garrett.

The Trial Judge found the petitioner guilty on the major counts of the indictment, Cts. 1, 2 and 8, based on testimony of DUSM Luke Adler, Officer Joseph Kuster and Officer Bobby Garrett, finding their testimony to be more crebile over petitioner's witnesses testimony.

The trial Judge found it believable the testimony of Adler and Garrett, that petitioner had made a verbal confession to them concerning two-separate arrest incidents on November 6, 1995 and February 1, 1997, that the 357 cal firearm seized off a floor, and a 9mm cal. firearm seized from someones bedrrom closet, were his guns.

From 1999 through 2014 petitioner pursued Freedom of Information Act litigation, discovering in 2003 that the assigned case agent ATF Agent James Green, had been concealing 1,188-pages of investigative documents in an "unofficial case file". Which is a kind word for saying "Secret File". Then in 2014 the government subsequently disclosed in full two-April 15, 1998 discovery disclosure letters through FOIA litigation, revealing for the first time it had been paying Bryant Troupe as an informant in the case, who witnesses had testified during trial Bryant Troupe was the owner of the 357 cal. firearm, and the black bag that contained the 33-

grams of powder cocaine. The two-April 15, 1998 letters disclosed that Bryant Troupe, who never testified, was working for the government as a paid informant in the case investigating the petitioner.

The government has conceded that the assigned case agent ATF Agent James Green, had the 1,188-pages of investigative documents in an "unofficial case file" in a sworn affidavit of Dorothy Chambers, BATF Disclosure Specialist, and also the attorney for Ms. Jane Lyons, BATF Attorney in the FOIA-civil action. See: Boyd v. U.S. Marshals Serv. at. al., 475 F.3d 381, 385 (D.C. Cir. 2007) (Where the D.C. Circuit Court acknowledged in its opinion the agent had got caught with what was referred to as a "work file".).

Under the record keeping policies of BATF, agenies do not store investigative case documents in their "work file" or any other file, that not an "official case file". So in essense, ATF Agent James Green had got caught maintaining a "Secret File" of 1,188-pages of investigative documents.

Witness's Sharron Troupe and Muhammad Mateen, both testified at trial, the 9mm firearm and Black bag containing cocaine, was Bryant Troupe's property.

Two-Attorneys have submitted affidavits in this case, two-Affidavits from Trial Counsel Carl Epstein, and an affidavit from Counsel Paul Sims, which have never been entertained by any court.

The government is still concealing hundreds of pages of investigative documents and information in this case. The government has only disclosed some 387-pages out of the 1,188-pages of inves-

tigative documents, and refuse to provide the discovery disclosure materials on informant Bryant Troupe, even though the April 15, 1998 discovery letters, claims on the letters, these documents had been "hand-delivered" to Trial Counsel Carl Epstein. Even witnin hundreds of pages of the 387-pages of investigative documents redacted information has been blackout from the petitioner.

The petitioner has filed numerous motion request in the Eighth Circuit Court of Appeals for a second or successive habeas corpus petition, raising Brady violations concerning the withheld documents. But its well understood that a federal prisoner cannot pursue habeas corpus relief on a Brady claim, regardless if it violated the petitioners constitutional rights if the new evidence did not prove "actual innocence" of the conviction. See: Abdullah v. Hedrick, 392 F.3d 957, 961-62 (8th Cir. 2004): Wooten v. Cauley, 677 F.3d 303, 307 (6th Cir. 2012).

As the Supreme Court has made clear in Smith v. Cain, 565 U.S. 73 (20120, reaffirming Wearry v. Cain, 136 S.Ct. 1002 (2016), a petitioner in post-conviction litigation needs only to show on a Brady claim, that, "more likely than not" he would have been acquitted, instead of the "actual innocence" standard put in place to hinder federal petitioners relief on their Brady violations.

The alarm has long been sounded about the government failing to disclose discoverable materials in their possession. This case is just one case in a long line of examples that shows that discovery abuses are still being carried out, and the government is not being held accountable. Thw writ of certiorari should be

granted to assure that all federal prisoners are incarecerated in prison with their Constitutional rights being protected by the laws of the United States of America.

ARGUMENT

Petitioner contends that this Court should grant certiorari, vacate the court of appeals' decision, and remand for further proceedings (GVR) because the lower courts erred in denying the Section 2241 habeas corpus. The lower courts premise for summarily dismissing the petitioner's § 2241 petition stands in conflict with this Court in United States v. Hayman, 342 U.S. 205, 72 S.Ct. 263, 96 L.ED. 232 (1952). In the dicta of Hayman this Court stated, "In a case where the Section 2255 proceeding is shown to be "inadequate or ineffective", the Section provides that the habeas corpus remedy shall remain open to afford the necessary hearing." Hayman, 342 U.S. at 223. The Sixth Circuit Court of Appeals, as well as the district court, has come to a different conclusion than the Hayman Court. Those lower courts have held that a claim based on new evidence must establish "actual innocence" of the conviction for § 2241 habeas relief. See: Appendixes A, B, and C.

Petitioner had demonstrated that the 28 U.S.C. § 2255 habeas corpus was "inadequate or ineffective" for the petitioner to bring his Fifth Amendment Constitutional Brady violation claim in a second or successive 28 U.S.C § 2255(h)(1), based on the new evidence discovered after his § 2255 habeas corpus petition had been denied.

The question presented here is whether this only standard of new evidence of "actual innocence", has suspended the writ of habeas corpus for federal prisoners bringing violations of Brady v. Maryland, 373 U.S. 73 (1963), within the meaning of Art. 1, § 9, Cl. 2,

of the United States Constitution, where the federal petitioner has demonstrated the new evidence discovered long after the trial and the petitioner's § 2255, was material to a fair trial.

Petitioner brought his § 2241 habeas petition in the district court in light of Wearry v. Cain, 136 S.Ct. 1002, 194 L.Ed.2d 78 (2016), based on this Court's decision that reaffirmed the constitutional principles of the Brady rule, and setout how courts are to review a due process violation of a Brady claim, as oppose to an actual innocence clai, stating: "To prevail on his Brady claim, Wearry need not show that he "more likely than not" would have been acquitted. Smith v. Cain, 565 U.S. 73, ____- ____, 565 U.S. 73, 132 S.Ct. 627, 630, 181 L.Ed.2d 571, 574 (2012). He must show only that the new evidence is sufficent to "undermine confidence" in the verdict."

Petitioner's new evidence discovery was supported by (3) sworn affidavits (2) affidavits from Trial Counsel Carl Epstein, and (1) Counsel Paul Sims. The petitioner produced evidence that the assigned case agent ATF Agent James Green, withheld 1,188-pages of documents from my trial. The Government has conceded the fact that Special Agent Green, had these discoverable investigation documents in an "unofficial case file", and not stored in the ATF official case file # 745519-97-0012.

Petitioner also discoveered evidence that had been suppressed on a rogue paid informant Bryant Troupe, these documents revealed that Bryant Troupe, who never testified was paid $2,953.90 for his involvement in the case. Which was not revealed until Feburary of 2014.

Witnesses testified at petitioner's trial, Sharron Troupe, Lorre Troupe, and Muhammad Mateen, that Bryant Troupe, was the owner of the Black bag (with 33-grams of powder cocaine), and a 9mm cal. firearm, that petitioner had been charged with.

The fact that Bryant Troupe was a agent for the government and was being paid by the government was material to a fair trial.

Petitioner also discovered documents after the trial that could have been utilized to impeach DUSM Luke Adler and rogue St. Louis Police Officer Bobby Garrett, who had both gave testimony concerning two separate arrest incidents, in 1995 and 1997.

Both Adler and Garrett gave testimony that petitioner gave a verbal confession that petitioner was the owner of a charged 357 cal. firearm and a 9mm cal. firearm, which was not corroborated by any other evidence, but their testimony.

Petitioner put on several witnesses at trial to prove that neither Luke Adler and Bobby Garrett were credible, which were Eric Cole, Wilbert Harris, Jacqueline Boyd, Alonzo Wrickerson, Gerald Boyd, and Willie Wise.

So any investigative documents that would have impeached Luke Adler and Bobby Garrett's testimony, would have been material in this circumstantial evidence case.

This Court long held in Banks v. Dretke, 540 U.S. 668, 969, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004), "A rule thus declaring" prosecutor may hide, defendant must seek, is not tenable in a system constitutionally bound to accord defendants due process."

The Banks Court also state, "It has long been established that the prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." Banks, 540 U.S. at 694.

The lower courts position that you cannot take a Brady claim in a § 2241, based on new evidence, that does not prove "actual innocence", is rewarding the prosecutor and its team with successfully suppressing material evidence from a federal prisoner's trial.

The 28 U.S.C. § 2241(c)(2), habeas corpus, is suppose to be available those prisoners being held in "custody in violation of the Constitution or laws or treaties of the United States."

This Court has long held that a Fifth Amendment due process violation, such as Brady, stands as a violation of a Constitutional right. United States v. Bagley, 473 U.S. 667 (1985): Appendix-E.

A Brady claim does not meet the standard for taking a second or successive § 2255(h)(1), based on newly discovered evidence, which states, "Newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." See: 28 U.S.C. § 2255(h)(1).

The Sixth Circuit should have found the § 2255 to be "inadequate or ineffective" for petitioner to take a Brady claim on a second or successive petition, because the Eighth Circuit has established only "actual innocence" under § 2255(h)(1), not a due pro-

cess violation. See: Abdullah v. Hedrick, 392 F.3d 957, 961-62 (8th Cir. 2004).

So as properly understood, a Brady violation claim is foreclosed from being held in a second or successive petition in the Eighth Circuit, because Brady is not an "actual innocence" claim. But a Fifth Amendment due process violation claim that deals with new evidence, that is material, and that there is a reasonable probability the evidence would "undermine confidence" in the verdict. Wearry v. Cain, 194 L.Ed.2d at 84.

The Wearry Court in making its distinction on a Constitutional principle of what constitutes a Brady violation stated in its opinion, "even if the jury-armed with all of this new evidence-could have voted to convict . . ., we have "no confidence that it would have done so." Wearry, 194 L.Ed.2d at 86.

The Sixth Circuit has established only one standard for 28 U.S.C. § 2255(h)(1) and 28 U.S.C. § 2241 for petitioners to take a post-conviction motion after the § 2255 motion, and that based on new evidence of "actual innocence". "We have "found the savings clause to apply only where the petitioner also demonstrates 'actual innocence.'" Wooten, 677 F.3d at 307 (quoting Peterman, 249 F.3d at 461-62). A viable actual-innocence claim requires a petitioner to "demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." See: Appendix-C.

This Court has been explicit that z 2255 was never meant to supplant § 2241, but was simply crafted to address practical concerns of habeas administration. See: United States v. Hayman,

342 U.S. 205 (1952)("Nowhere in the history of Section 2255, determined the court, "do we find any purpose to impringe upon prisoner's rights to collateral attack upon their conviction."). Hayman, 342 U.S. at 219.

The district court held the position that a Brady claim is "not cognizable under § 2241." See: Appendix-B, p. 1. The Sixth Circuit affirmed the district court without any briefing on the issue. See: Appendix-C.

Not to address the petitioner's Brady claims on their merits under § 2241(c)(3), would raise "serious constitutional questions", were the prosecution has suppressed the evidence and the petitioner has not had a full and fair opportunity to bring his claims timely in his initial § 2255 motion, because the government was suppressing the evidence.

There exist a "structural problem" with the § 2255, and the savings caluse § 2255(e) provides the only avenue to have the Constitutional Brady claim addressed on its merits, allowing the federal petitioners to take a § 2241 habeas corpus petition.

It should be undisputed, that § 2255 is "inadequate or ineffective" to test the legality of petitioner's detention. Where the government has suppressed the evidence in question, that prevented the petitioner from taking an unobstructed opportunity to correct a wrongful conviction. The writ of certiorari should be granted. [Dated: December 10, 2018].

Respectfully Submitted,

Willie E. Boyd