

No. 18-7713

IN THE SUPREME COURT OF THE UNITED STATES

Darnell Grimsley,

Petitioner,

v.

Tom McGinley,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO  
THE THIRD CIRCUIT COURT OF APPEALS

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PETITION FOR REHEARING

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Darnell Grimsley

HU-3983

1 Kelley Drive

Coal Township, PA 17866

Petitioner Pro se

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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

COMES NOW Petitioner, Darnell Grimsley, Pro se, and prays this court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Third Circuit Court of Appeals,

In Support of petition, Mr. Grimsley states the following.

STATEMENT OF FACTS

At a second Trial, Darnell Grimsley was convicted by a jury of first degree murder and possession of instrument of crime and sentenced to life without the possibility of parole and one to two years.

According to the commonwealth's star witness, Qunicy Bass/ Eric Barnes, that morning he was standing on Ludlow street and observed Mr. Grimsley receive what appeared to be a gun and that he thinks he saw the butt of what is believed to be a gun. About an hour later he was walking down chestnut street and stopped on the corner of Redfield and Chestnut where he observed two gentlemen walking down Redfield street. One of the men pulled a handgun from his waist, pointed the gun to the back of the other man's head and pulled the trigger.

Bass/Barnes claimed to have known Mr. Grimsley for about eleven months before the homicide occurred, from seeing Mr. Grimsley in the neighborhood everyday.

According to Bass/Barnes the murder took place because of mistaken identity. The commonwealth presented much testimony regarding events preceding and after Mr. Dunbar's Death, yet offered no evidence to support that it was mistaken identity as Bass/Barnes testified. The commonwealth presented just one witness, to testify regarding the actual shooting, Qunicy Bass/ Barnes. However, Mr. Barnes, lacked credibility, Mr. Barnes admitted that he lied to the authorities about his name during the preliminary hearing and at both trials, after giving a statement and signing his name Qunicy Bass. When in fact his actual name was ERIC BARNES during the time of his false statement. Mr. Barnes was also a NO SHOW for multiple preliminary

hearings, that is until he was arrested for possession of controlled substance and violating his probation/parole. Actual eyewitnesses Paula Bluster and William Cooper who were on the scene during the homicide were never contacted to appear for the preliminary hearing. Mr. Barnes admitted at the preliminary hearing and during both trials that he was unable to see who the shooter was due to their back being turned away from him.

Mr. Grimsley provided proof to the courts to dispute claims by Mr. Barnes that he saw Mr. Grimsley everyday in the neighborhood for eleven months before the homicide.

Since Mr. Grimsley was living in **EASTON, PA** during the eleven months, and working at **MCDONALD'S** during the day and at **WAL\_MART** during the night, also Mr. Grimsley was on **WELFARE** and attending group programs as a result for being on welfare, everyday while being in **EASTON**.

Mr. Barnes testified on record that the homicide he claimed to have witnessed occurred during the daytime (late morning/early afternoon) according to Mr. Barnes, when in fact the homicide occurred in between 6:30pm and 7:00pm. The commonwealth presented no evidence at trial to convict Mr. Grimsley, in fact during Mr. Grimsley second trial and first trial, eyewitness Paula Bluster testified that she was sitting in her mini van smoking a cigarette on Chestnut street and observed the two men walking up chestnut street and turn off on Redfield street seconds before she heard a shot. Her testimony should have been the nail in the coffin, yet it wasn't since the corner Mr. Barnes claimed to have been on was the very same corner Ms. Bluster sat in her van directly in front of, and testified that **(NO ONE)** was on that corner watching **ANYTHING**.

In fact both eyewitnesses who gave statements on the same night of the murder gave homicide detectives the same exact description of the perpetrator and that Mr. Grimsley was **(NOT THE PERPETRATOR)**. Commonwealth presented no physical evidence, only testimony from a convicted criminal who were just arrested days prior to his preliminary hearing, only to reveal that he knew nothing about the homicide, from giving a statement a month later and lying about his name, to not knowing if he saw Mr.

Grimsley receive a gun or not, to not knowing the time of the homicide, to lying about seeing Mr. Grimsley in the neighborhood for eleven months before the homicide. The commonwealth's case was not sufficient enough to convict Mr. Grimsley for First Degree Murder.

#### REASONS MERITING REHEARING

1. The Third Circuit decision is clearly in conflict with Strickland v. Washington, 466 u.s. 668 (1984); and Williams (Terry) Taylor, 529 u.s. 362 (2000), emphasizing that in determining Strickland prejudice, the court must examine both the trial testimony and the post-conviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probability of a different outcome, in that the Third Circuit merely examined the opinions of the lower courts which stated the facts in the light most favorable to the jury's verdict and all contrary evidence ignored. For example, the state court's opinion states, that all the witnesses testimony collaborated each other's and that the description giving by Eric Barnes was the exact same as the description of the other actual eyewitnesses, a claim that's not supported by the record and clearly none of the other court's examined any testimony or filings made by Mr. Grimsley over the years, all because Grimsley is unable to afford proper representation and for relying on the direction of an incompetence lawyer who never had my best interest at heart.

The Third Circuit further ignored the fact that eyewitness Paula Bluster testified on record that the perpetrator was taller than the victim, (Mr. Grimsley is shorter than them both) and that the perpetrator had on a black hoodie with the hood up. Same as William Cooper who also gave the same description as Paula Bluster. Not a gray hoodie, blue and white nike sneakers and black and white gloves, as stated by Eric Barnes.

The Third Circuit is also in conflict with Jackson v. Virginia

443 u.s. 307 (1979), Also a new important Pennsylvania Supreme court case was decided, in the interest of J.B., 189 A.3d 390 (Pa 2018), held that when evaluating a claim of sufficiency of the evidence, the appellant court must review all of the evidence, not just the evidence in the light most favorable to the prosecution as the verdict winner, each and every element of the charged offense must be established beyond a reasonable doubt, the defendant wins all ties. The evidence is insufficient if, on balance, it is as likely the defendant is not guilty as it is that he is guilty. As with Grimsley's case, where there is no evidence, no motive, no fingerprints, no weapon, no actual eyewitnesses identifying Mr. Grimsley as the perpetrator, even commonwealth's star witness said ( I didn't actually see the shooter's face because their back was turned.

Furthermore, the Third Circuit further ignored the fact that the court appointed lawyer for Mr. Grimsley was completely ineffective, by failing to have a face to face with Mr. Grimsley to prepare for his second trial, which took place eleven months after a mistrial. Counsel for Mr. Grimsley was sent crucial information regarding a recording that had nothing to do with the case, yet it was used to convict Mr. Grimsley. Trial counsel never attempted to contact and never did visit Mr. Grimsley.

2. The Third Circuit decision is clearly in direct conflict with Stanley v. Bartley, 465 F.3d 810 (7th cir. 2006), which case is so strikingly similar, both legally and factually, that the same result reached in stanley must also be reached in this case. This court MUST grant Rehearing and issue a Writ of Certiorari because the failure to do so would allow the Third Circuit to continue to apply the wrong standard in deciding the prejudice prong of ineffective assistance claims, and deny justice to those it is entitled to.

3. This court has an ethical duty by the United States Constitution to establish the law of the land and to assure the citizens of the United States of America that the lower courts apply that LAW. When they do not, it is this court's obligation

to HOLD THAT COURT ACCOUNTABLE and see to it that justice is administered fairly. This court must hear this case and hold the Third Circuit accountable for failing to properly apply the law of this court and relief where relief is do.

#### SUGGESTIONS IN SUPPORT OF REHEARING

The Third Circuit court of appeals decision that Grimsley petition was not worth an actual review is an injustice that resulted in both an unreasonable determination of the facts in light of the evidence presented and an unreasonable application of Strickland v. Washington, because counsel's failure to visit with Mr. Grimsley after receiving crucial information from the District attorney that led to Grimsley conviction and proof shown to the court's that counsel failed to have a face to face met the first prong of Strickland, As in Anderson v. Johnson, 338 F.3d 392 (5th cir. 2003); "(T)here is no' evidence that counsel's decision to forego investigation was reasoned at all, and it is, in out opinion, far from reasonable.

Counsel's failure to inform or to investigate said information with his client was not 'part of a calculated trial strategy' but is likely the result of either indolence or incompetence."

As this court put it in Strickland v. Washington, 466 u.s. 668, (1984), in representing a criminal defendant, counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest, a duty to advocate the defendant(s) cause, a duty to consult with the defendant on important decisions, a duty to keep defendant informed of important developments in the course of the prosecution. Here Counsel failed to meet these standards. Under the circumstances here, the commonwealth had the burden to show a strategy supporting the failure to visit Mr. Grimsley, because it failed to do so, Grimsley has clearly met the "performance prong" of the Strickland v. Washington, 466 u.s. 668, 687-88 (1984) test. The question for this court to answer is whether Mr. Grimsley was prejudiced by his trial counsel's ineffectiveness.

The result reached in stanley is also required here, commonwealth's witness in this case were highly suspect, not over-



whelmingly compelling. Mr. Barnes, a drug addict and convicted felon, knew nothing about the homicide, in fact when asked the time of the homicide, Mr. Barnes stated " **Late morning/early afternoon,**" which clearly was not the time of the homicide, in fact his time was way off. Mr. Barnes lied about his name, the reason for lying about his name, about seeing Mr. Grimsley everyday in the neighborhood for eleven months before the homicide, about witnesses the homicide, when eyewitness Paula Bluster rebutted Mr. Barnes claim that he was on the corner of Redfield and Chestnut watching the homicide, the same corner that Ms. Paula Bluster was sitting in her mini van smoking a cigarette and observed the two men walking on Chestnut before turning off onto Redfield seconds before hearing a shot. Also Ms. Bluster testified that there was **NO ONE ON THE CORNER** watching anything.

The commonwealth held that Mr. Grimsley had not demonstrated prejudice from the prosecutor's misconduct or his trial counsel's ineffectiveness. This conclusion is likewise an unreasonable interpretation of Strickland or Brady and its progeny. Williams "(Terry) Taylor, 529 u.s. 362 (2000), emphasizes that in determining Strickland prejudice, the court must examine both the trial testimony and the post-conviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probability of a different outcome.

To the extent that inferior Federal courts have decided factually similar cases, reference to those decisions is appropriate in assessing the reasonableness...of the commonwealth's courts treatment of the contested issue. Copeland v. Washington, 237 F.3d 810 (8th cir. 2000). Mr. Grimsley refers this court to Stanley v. Bartley, 465 F.3d 810 (7th cir. 2006), as was the case in Stanley, the issue is not whether Grimsley is innocent (**which he is**), but whether if he had a competent lawyer he would have had a reasonable chance (it needn't be a 50% percent or greater chance; Miller v, Anderson, 255 F.3d 455, 459 (7th cir. 2001), of being acquitted; given that guilt must be proven beyond a reasonable doubt, guilty people are often acquitted.

Similarly, given Bass/Barnes criminal background, the fact that he was arrested and charged with a crime in order for him to be present for a preliminary hearing, him lying to the authorities about his identity, and his lack of knowledge involving the homicide, and not revealing his arrest prior to him testifying, the jury easily could have disbelieved his account of witnessing Mr. Dunbar's death. In fact the first trial of Grimsley's resulted in a mistrial. The other witnesses to the homicide both gave different descriptions of the perpetrator and testified that it was not Mr. Grimsley, at both trials.

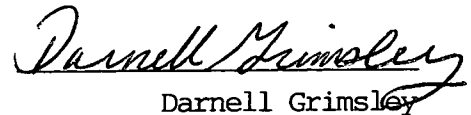
The question for this court to answer is whether there was sufficient evidence beyond a reasonable doubt to convict Mr. Grimsley.

Mr. Grimsley did not make any admissions to police, the closest thing to direct evidence connecting him to the crime was Bass/Barnes. No investigation was ever launched. No murder weapon was ever found, Mr. Grimsley place of residence during the time of the homicide was never searched. No fingerprints were recovered. Commonwealth proved nothing beyond a reasonable doubt. The only evidence linking Mr. Grimsley to this case was Mr. Grimsley being in the courtroom without a paid lawyer and being represented by an incompetent lawyer. Commonwealth did have the inconstant testimony of Qunicy Bass/Eric Barnes, but only after him being arrested for possession of controlled substance. It's very hard to believe that Mr. Grimsley is serving a life sentence, all because of his financial status and having an incompetent lawyer appointed by the courts to represent him and testimony by a convicted felon who knew very little about the homicide. Had the jury been able to hear all (arrest) regarding Eric Barnes criminal history, there is a reasonable probability of a different outcome.

CONCLUSION

For the reasons stated, this court must grant Rehearing of its Judgment entered on February 25, 2019, and issue a Writ of Certiorari to hold the Third Circuit accountable for failing to properly apply the law of this court and grant Mr. Greimsley relief. Should Grimsley's cry for justice not be heard and denied relief; May this court also cry and not be heard "For whoever shut their ears to the cry of the poor will also cry themselves and not be heard." Proverbs 21:13.

Respectfully Submitted,

  
Darnell Grimsley

HU-3983

1 Kelley Drive

Coal Township, PA 17866

Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, this 17 day of March, 2019, to; Darby G. Sullivan, District Attorney's office, Three South Penn Square, Philadelphia, PA 19107-3499.

  
Petitioner

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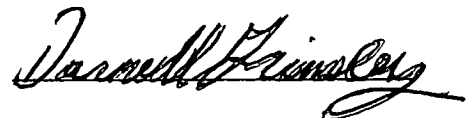
CERTIFICATE OF GOOD FAITH

Comes Now Petitioner, Darnell Grimsley, and makes certification that his petition for rehearing is presented to this court in good faith pursuant to rule 44. Mr. Grimsley further states the following:

1, This court entered its Judgment denying petitioner a Writ of Certiorari on February 25, 2019. Petitioner believes that he presents this court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay. Furthermore, petitioner believes that based upon the law of this court and facts of this case, Grimsley is entitled to relief which has been unjustly denied him. He further believes that if the Third Circuit court of Appeals are continually allowed to apply the Strickland, Jackson standard improperly, a number of people will be denied their Constitutional right to due process.

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

Executed on this 17 day of March, 2019.

A handwritten signature in cursive script, reading "Darnell Grimsley". The signature is written in dark ink and is positioned in the lower right area of the page.