

NO. 18-8100

Supreme Court, U.S.
FILED

SEP 26 2018

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IN THE
SUPREME COURT OF THE UNITED STATES

SENICA MATTHEW FRANKLIN - PETITIONER

VS

STATE OF MISSISSIPPI - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

SENICA MATTHEW FRANKLIN, #R6822
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ORIGINAL

QUESTION(S) PRESENTED

Whether Seneca Franklin's conviction and sentence should be reversed and set aside based upon newly discovered evidence.

Whether Seneca Franklin's conviction and sentence should be reversed and set aside because of his actual innocence.

LIST OF PARTIES

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

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The opinion of the highest State Court to review this case appears at Appendix-A, to the petition and is unpublished.

JURISDICTION

The date on which the highest State Court decided my case was July 19, 2018. A copy of that order appears at Appendix-A.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in pertinent part, as follows:

"nor shall any State deprive any person of life, liberty, or property... without due process of law."

U.S. Const. XIV AM.

STATEMENT OF THE CASE

PETITIONER was indicted by a Harrison County, Mississippi Grand Jury in Cause number B2401-04-00096, on/or about the 13th day of December, 2004. PETITIONER was charged multiple counts as follows: COUNT-I, murder, pursuant to §97-3-19(1)(a); COUNT-II, murder, pursuant to §97-3-19(1)(a); and COUNT-III, Arson, pursuant to §97-17-1.

In respect to these charged criminal offenses, PETITIONER was tried by jury on three (3) separate occasions... The first and second trial(s) both ended in mis-trials. AT the conclusion of the third (final) trial, PETITIONER was convicted on all three (3) counts of the indictment on/or about the 7th day of March, 2007, in the Circuit Court of Harrison County, Mississippi, with the Honorable Circuit Judge Roger T. Clark, presiding over the trial.

Subsequently thereafter, on/or about the 8th day of March, 2007, PETITIONER was sentenced as follows: in COUNT-I, to life imprisonment; in COUNT-II, to life imprisonment; and in COUNT-III, to serve twenty (20) years of imprisonment... These sentences were ordered to be served concurrent with each and the other, in the custody of the

Mississippi Department of Corrections.

Petitioner perfected a timely appeal in the Court of Appeals for the State of Mississippi. That on/or about the 21st day of April, 2009, in case NO. 2007-CT-01436-COA, the Court of Appeals affirmed the conviction and sentence of the trial court... That on/or about the 18th day of August, 2009, the Court of Appeals denied Petitioner's motion for rehearing... That on/or about the 10th day of December, 2009, in case NO. 2010-M-00088, the Supreme Court of the State of Mississippi denied Petitioner's petition for writ of certiorari.

This instant petition is predicated upon newly discovered evidence and actual innocence.

REASONS FOR GRANTING THE PETITION

A.

SENICA FRANKLIN'S CONVICTION AND SENTENCE SHOULD BE REVERSED AND SET ASIDE BASED ON NEWLY DISCOVERED EVIDENCE.

Notwithstanding the passage of time, Petitioner now submits this specific issue of newly discovered evidence, in which at the very

least warrants a new Trial. In spite of the Three (3) year statute of limitation in litigating this issue--in which has expired-- this court in its discretionary authority, can still grant the relief requested, in the interest of justice, when such is required; see, U.S. v. Lentz, 383 F.3d 191, 221 (4th cir. 2004). See also, U.S. v. Banks, 546 F.3d 507, 513 (7th cir. 2008) and U.S. v. Lee, 573 F.3d 155, 165 (3d cir. 2009).

Petitioner is cognizant of the fact that, in order to obtain a new Trial, based on newly discovered evidence-- five (5) factors must be shown, as follows: (1) The new evidence was discovered after Trial... Herein, the newly discovered evidence consist of perjury testimony by the state's two (2) primary witnesses [Christopher Thompson and Reginald Merritts], in which Petitioner could not have discovered before Trial; see, U.S. v. Alessi, 638 F.2d 466, 479 (2d cir. 1980). See also, U.S. v. Zagari, III F.3d 307, 322 (2d cir. 1997) and U.S. v. Canova, 412 F.3d 331, 349 (2d cir. 2005); (2) The failure to learn of the evidence at the time of Trial was not due to the defendant's lack of diligence... Throughout the Trial(s), both Thompson and Merritts maintained-- under oath-- that the prosecutor did not make them any sentencing promises(s)

for Their Testimony against Petitioner. This information-- promises made and fulfilled by the Prosecutor, starting coming together in 2012 for Petitioner; via the assistance of The Innocence Project of New Orleans; see, U.S. v. Custis, 988 F.2d 1355, 1359 (4th cir. 1989). See also, U.S. v. Singh, 54 F.3d 1182, 1190 (4th cir. 1995) and U.S. v. Fulcher, 250 F.3d 244, 248 (4th cir. 2001); (3) The evidence is material to the issues involved... The testimonial evidence of Thompson and Merritts is what connects Petitioner to the crime in question-- without such perjured testimony, Petitioner would have surely been acquitted. Thus, the evidence in question is facially material; see, U.S. v. Stoddard, 875 F.2d 1233, 1238 (6th cir. 1989). See also, U.S. v. Gonzalez, 163 F.3d 255, 264 (5th cir. 1998) and U.S. v. Hernandez-Rodriguez, 443 F.3d 138, 145 (1st cir. 2006); (4) The evidence is not merely cumulative or impeaching... Herein, both Thompson and Merritts lied consistently while under oath-- that the Prosecutor did not promise them a sentence reduction per se, or anything for their testimony against Petitioner-- and the Prosecutor improperly sanctioned these lies to bolster the state's case--in chief, such evidence not merely cumulative or impeaching; see, Kyles v. Bartholomew, 516 U.S. 1, 5 (1995). See also, Wood v. Wiley, 514 U.S. 419, 434 (1995) and

U.S. v. Joselyn, 206 F.3d 144, 153 (1st cir. 2000); and (5) A new Trial would probably produce a different result... However, in regards to this fifth and final factor, this somewhat delphic undermine confidence formula (Prosecutor withholding exculpatory evidence), suggest that reversal may be warranted in some cases even if there is less than an even chance that the evidence would produce an acquittal; see, U.S. v. Sepulveda, 15 F.3d 1216, 1220 (1st cir. 1993). See also, U.S. v. Cuffie, 80 F.3d 514, 519 (D.C. Cir. 1996) and U.S. v. Cunan, 152 F.3d 29, 34 (1st cir. 1998).

Notwithstanding the fact that Grady Somrall submitted a signed notarized affidavit on/or about the 16th day of September, 2009, which may not necessarily qualify as newly discovered evidence at this late date-- the same is worthy of mentioning herein. For one thing, Petitioner have not had his day in court, since the birth of Somrall's affidavit. Furthermore, the contents of Somrall's affidavit recants his trial testimony and any other prior statements as to Petitioner's alleged involvement in the crime in question. This precise evidence is worthy to be presented to a new jury; see, U.S. v. Metz, 652 F.2d 478 (5th cir. 1980). See also, U.S. v. Glover, 21 F.3d 133, 138 (6th cir. 1994) and

U.S. v. Jasin, 280 F.3d 355, 361 (3d Cir. 2002).

The facts set forth herein, shows that the evidence in question is newly discovered and warrants petitioner a new Trial. The factors: (a) The evidence must be, in fact, newly discovered evidence (i.e., discovered post Trial); (b) facts must be alleged from which the Court may infer diligence on the part of the movant; (c) the evidence relied on must not be merely cumulative or impeaching; (d) it must be material to the issues involved; and (e) it must be such, and of such nature, as that, on a new Trial, the newly discovered evidence would probably produce an acquittal... goes hand-in-hand with Sumrall's recantment in pertinent part as follows:

"At this time, and with this sworn to affidavit, I Grady L. Sumrall, wish to recant my Trial Testimony, and any, and all previous statements (verbal or written), made to any party, as to Franklin committing these crimes, because of such testimonies, statements, and etc., are purely fabrications on my part."

See, U.S. v. Lussier, 219 F.3d 217, 219 (2d Cir. 2000). See also, U.S. v. Campa, 459 F.3d 1121, 1141

U.S. v. Connolly, 504 F.3d 206, 210 (1st Cir. 2007).

In the case sub judice, The failure of the Prosecutor to turn over this impeachment information of Thompson and Merritts, amounted to a discovery violation, serving to deprive Petitioner of a fair trial. A new trial is warranted to remedy a discovery violation -- to assure a fair trial; see, U.S. v. Miller, 199 F.3d 416, 420 (7th Cir. 1999). See also, U.S. v. Lopez, 271 F.3d 472, 483 (3d Cir. 2001) and U.S. v. Mitchell, 365 F.3d 215, 254 (3d Cir. 2004).

The ordeal with Grady Sumrall, along with the newly discovered knowledge (evidence) that Thompson and Merritts lied under oath (known to be lies by the prosecutor), about their not receiving reduced sentences or anything in exchange for their testimony, when at all times such promises of reduced sentences was already made and established (later fulfilled), by the prosecutor for their testimony against Petitioner Franklin. Such promises providing Thompson and Merritts motive to lie (just what they did) warrants Petitioner a new trial with this discovery of this information; see, U.S. v. Gustafson, 728 F.2d 1078, 1084 (8th Cir. 1984). See also, U.S. v. Reyes-Alvarado, 963 F.2d 1184, 1188 (9th Cir. 1992) and U.S. v.

Theodosopoulos, 48 F.3d 1438, 1448 (7th Cir. 1995).

B.

SENICA FRANKLIN'S CONVICTION AND SENTENCE SHOULD BE REVERSED AND SET ASIDE BECAUSE OF HIS ACTUAL INNOCENCE.

From the outset of this case, it was alleged by the state's so-called credible witnesses that, Petitioner was upset with (mad) Brenda Mason on October 31, 2001, because Petitioner had sold her drugs (controlled substance), and Mason refused to pay him for same. However, according to the police report of Detective Craig Petersen, the toxicology test performed on Mason was negative for the presence of drugs... Thus, a necessary fabrication of a reason (motive) for Petitioner to harm Mason. This revelation goes hand-in-hand with Petitioner's claim of actual innocence; see, Smith v. Murray, 477 U.S. 527 (1986).

It goes to show that if no drugs was purchased from Petitioner by Mason -- then why would Petitioner have a beef with Mason, and want to end her life in such a manner. Petitioner submits that on the date in question,

he had no inner-relations whatsoever with Mason; did not kill her or Ronald Brock, and always continue to profess his actual innocence. Petitioner maintains that Smith, supra, holds that, if one can show that an error precludes the development of true mitigating evidence, actual innocence has been shown; see, Teague v. Lane, 489 U.S. 288, 313 (1989) and Coleman v. Thompson, 501 U.S. 722, 748 (1991).

Petitioner was interviewed on November 2, 2001, and question as to what clothing he was wearing on the date of this alleged crime by him. Petitioner Franklin related that he was wearing a black, gray, and yellow wind suit on October 31, 2001... This fact of clothing worn by Petitioner was also confirmed by Merritts when interviewed by Detective Mickey Hooks-- Merritts stated that, on October 31, 2001, Senica (Petitioner Franklin) was wearing a dark colored warm-up suit, with gold or yellow stripes.

As a result of these acknowledgments, a search warrant issued, the exact clothing confiscated, and tested for residual DNA-- with a negative finding. These negative finding of any trace of DNA evidence further represent proof that, Petitioner was not present at the scene and

had nothing to do with the deaths of Mason or Brock, or torching the house -- The errors in this regard has resulted in the conviction and sentence of one who is actually innocent; see, Gardner v. Florida, 430 U.S. 349, 357-58 (1977). See also, Solem v. Helm, 463 U.S. 277, 294 (1983) and Murray v. Carrier, 477 U.S. 478 (1986).

Following the negative DNA tests on petitioner's worn clothing, on December 21, 2001, and on December 31, 2001, the fire/police departments, caused several material items seized from the residence (crime scene), such as wooden debris, foam rubber, cloths, and etc., to be examined for the presence of ignitable liquids, in regards to the fire allegedly set by petitioner. However, upon testing these materials, no ignitable liquids were detected... a further showing of petitioner's actual innocence. This procedure encompasses the fundamental miscarriage of justice exception -- as a safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty; see, Stone v. Powell, 428 U.S. 465, 491 (1976). See also, McCleskey v. Zant, 499 U.S. 467, 495 (1991) and Sawyer v. Whitley, 505 U.S. 333, 344 (1992).

In further support of petitioner's claim of actual innocence, petitioner asserts that, his

Trial(s) Counsel actually provided ineffective assistance of Counsel... as denoted in a Harrison County document dated April 21, 2009. Trial Counsel(s)' performance was deficient as there were no independent pre-trial investigation; a failure to interview potential defense witnesses -- with exculpatory information to impart; a failure to file a timely suppression motion(s) to challenge unconnected evidence, and 'inter alia' a failure to make timely objections. In this regard, Petitioner's claim of actual innocence, is both procedural and substantive. Petitioner's constitutional claim of actual innocence is based partially on the ineffective assistance of counsel, and the prosecutor withholding exculpatory evidence... The deals made with Thompson and Merritts by the prosecution for their testimony against Petitioner; see Brady v. Maryland, 373 U.S. 83 (1963). See also, Strickland v. Washington, 466 U.S. 668 (1984) and Schlup v. Delo, 513 U.S. 298, 309 (1995).

Petitioner's claim of actual innocence is also based in further support of the facts that, he was subjected to vindictive prosecution, by the state's prosecutor, its employees and/or agents... especially Detective Sergeant Craig Petersen. To begin with, some time in 2003, Petersen was

quoted in multiple newspapers stating that he had already solved this alleged crime -- that was not concluded by a jury's guilty verdict until March 8, 2007, following three (3) trials. Also, during the grand jury session (September 2004) term whereas Petitioner was indicted -- with no first-hand conclusive information or knowledge, Petersen signed the indictment as the only witness.

At any rate, this procedure to obtain the conviction, by subtle and/or under-handed methods, amounted to vindictive prosecution. The quintessential miscarriage of justice is the exception of a person who is entirely innocent; See, In Re Winship, 397 U.S. 358, 372 (1970). See also, T. Starkie, Evidence, 756 (1824) and Newman, Beyond Reasonable Doubt, 68 N.Y.U. L. Rev. 979, 980-81 (1993).

Still further, Petitioner's actual innocence was somewhat shown by the jury panel setting in judgment of the evidence submitted by the state against Petitioner in the first two (2) trials -- ending in mistrials. When the case was presented to the jury in the first trial (December 15, 2005) for deliberation, a mistrial resulted because the jurors were unable to decide on a decision -- remaining deadlocked at seven (7) votes for a not-guilty verdict, and only

five (5) votes for a guilty verdict... The mistrial following the second Trial (May 25, 2006) remained deadlocked at six (6) votes undecided due to lack of credible evidence and six (6) votes for a guilty verdict.

This instant court is vested with the power to vacate and dismiss or vacate and remand; to act accordingly as a bulwark against convictions that violates fundamental fairness-- as in the conviction of petitioner now before this court and whom is actually innocent; see, Sanders v. U.S., 373 U.S. 1, 17-18 (1963). See also, Wainwright v. Sykes, 433 U.S. 72, 97 (1977) and Engle v. Isaac, 456 U.S. 107 (1982).

In regards to petitioner's actual innocence claim-- indeed concern about the injustice that results from the conviction of an innocent person, has long been at the core of our criminal justice system. This concern is reflected in the fundamental value determination of our society-- that it is far worst to convict an innocent man-- than to let a guilty man go free. The maxim of the law is-- that it is better that ninety-nine (99) offenders should escape, than that one innocent man should be condemned; see, Booth v. Maryland, 482 U.S. 496, 509 (1987).

see also, Clemons v. Mississippi, 494 U.S. 738, 750 (1990) and LanKford v. Idaho, 500 U.S. 110, 125 (1991).

In considering Petitioner's 'Petition for Writ of Certiorari' to The Mississippi Supreme Court-- notwithstanding the denial of same by the majority justices-- one justice (Kitchens), saw through the smoke screen of the alleged credible evidence against Petitioner-- knew Petitioner to be innocent-- and voted to grant relief requested (conviction vacated) by Petitioner. Thus, a reviewing court must adjudicate claims when required to do so, by the ends of justice; see, Woodson v. North Carolina, 428 U.S. 280, 303 (1976). See also, Kuhlmann v. Wilson, 477 U.S. 436 (1986) and Smith v. Murray, 427 U.S. 527 (1986).

The foregoing petition only raises two (2) issues, that are essential, critical, and meritorious: (1) newly discovered evidence; and (2) actual innocence. The facts set forth herein, supported by referenced law-- would tend to show that Petitioner's conviction(s) and sentence(s) violates protections afforded Petitioner under the provisions of the Eighth and Fourteenth Amendments to the United States Constitution; see Herrera v. Collins, 506 U.S. 390 (1993), and several similar cases.

Notwithstanding procedural bars, successive writs, and etc.; it is never too late for reviewing courts, faced with determining a case-at-hand, to look straight through procedural screens in order to prevent forfeiture of life or liberty in defiance of the Constitution; see, Brown v. Allen, 344 U.S. 443, 554 (1953). See also, Dugger v. Adams, 489 U.S. 401, 424 (1989) U.S. v. Olano, 507 U.S. 725, 731 (1993), and, and, other related and material cases of interest herein--unaccessible to petitioner.

REASONS WHY WRIT SHOULD BE GRANTED

In the case at bar, the record clearly shows that the jury's verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand and not reverse, would sanction an unconscionable injustice; see, Puckett v. U.S., 129 S.Ct. 1423, 1428 (2009). A reversal and new trial is necessary when there is [p]lain and [c]lear a significant possibility that improper testimonial evidence (falsely so), had a substantial impact on the verdict; see, 225 F3d 549 (5th Cir. 2000). When a jury's verdict is so contrary to the weight of the evidence, a miscarriage of justice results when there is a lack of credible evidence--or

is not supported by the evidence... and, the reviewing court is at liberty to vacate and dismiss or to vacate and remand for new trial; see, U.S. v. Honer, supra. at 551. See also, Cline v. Wal-Mart Stores, Inc., 144 F.3d 294 (4th cir. 1998) and U.S. v. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th cir. 2008).

In the instant case, the Testimonial (shown to be unreliable) evidence--non physical--is, at best, inconclusive and un-supportive of the conviction; to the extent that it is plain and clear that, a miscarriage of justice has occurred; see, U.S. v. Atkinson, 297 U.S. 157, 160 (1936). See also, Hill v. U.S., 368 U.S. 424, 428 (1962) and Reed v. Farley, 512 U.S. 339, 348 (1994).

CONCLUSION

This court should not hold petitioner to the standards of an attorney; where his meritorious claims would be lost due to being inartful presented; and should liberally construe this petition, and grant certiorari relief.

RELIEF SOUGHT

WHEREFORE PREMISES CONSIDERED, The

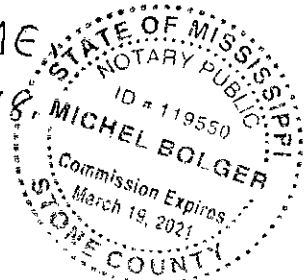
PETITIONER respectfully prays that this Honorable Court, in its lawful and/or discretionary authority, issue certiorari -- reversing the conviction and dismissing the indictment with prejudice, or in the alternative, reverse and remand for a new trial; and for such other relief deemed just and proper.

Respectfully Submitted,

Senica M. Franklin
SENICA FRANKLIN

SWORN TO AND SUBSCRIBED BEFORE ME
this the 26th day of Sept, 2018,

Michel Bolger
"NOTARY PUBLIC"



MY COMMISSION EXPIRES: 03.19.21