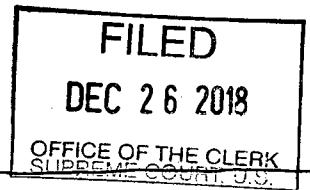


No. 18-8338

ORIGINAL

In The
Supreme Court Of The United States



Mr. Anthony T. Jackson - Petitioner

VS.

Lisa Madigan, Attorney General For The State Of
Illinois - Respondent.

Petition For Writ of Certiorari

Anthony T. Jackson
Register No.: S09966
Menard Correctional Center
P.O. Box 1000
Menard, IL 62259

Question Presented

Is the Illinois State court's refusal to allow a Petitioner for Post-Conviction relief to conduct an evidentiary so at least the record contains facts for a high Court may review the evidentiary facts an unconstitutional denial of Due Process under the 14th Amendment?

Parties

Petitioner, Pro se:

Anthony T. Jackson, #S09966, P.O. Box 1000, Menard, IL 62259
Fourth Judicial Circuit, Clinton County, Illinois Case No.: 08-CF-140

For Respondent:

Attorney General, Lisa Madigan, 500 South Second ST,
Springfield, IL 62706-1771

Prior Opinions And Orders

September 2009, Petitioner was found guilty of first degree murder.
December 2011, Petitioner's conviction was affirmed on direct appeal.

_____ People v. Jackson, 2011 IL App(5th) 100181-LL
August 2012, Petitioner filed a pro se Post Conviction Petition
March 2015, the trial court dismissed Petitioner's Post-Conviction
_____ Petition without an evidentiary hearing.

March 2018, the Appellate Court affirmed the trial court's ruling.

_____ People v. Jackson, 2018 IL App(5th) 150090-LL

September 2018, The Illinois Supreme Court denied Leave to
_____ Appeal.

Basis of Jurisdiction

Seeking U.S. Supreme Court review of the denial of an evidentiary hearing for Post Conviction Relief under Illinois 725 ILCS 5/122-1 et seq.; denial was by the Illinois Court of Appeals.

Jurisdiction is conferred on this Court by U.S. Sup. Ct. Rules 10(c) and 13(1). The state court decision was a final adjudication, and the denial conflicts with the Due Process Clause of the US 14th Amendment as read in *Pennsylvania v. Finley*, 481 US 551 (1987).

Constitutional Provisions and Statutes

United States Constitution, Amendment XIV

Illinois Post Conviction Hearing Act 725 ILCS 5/122-1 et seq (West 2012).

Statement Of Facts

The Petitioner moved to Centralia, Illinois from Arkansas in 2008. While living in Centralia, the Petitioner's acquaintances included Timothy Burton, Lloyd Finley, Brady McGruder, Brandon Purnell, Stacy Reese, Chwann Jones, Jared Queen, Erica Taylor, and Brittany Hohman, all of whom, with the exception of Taylor, were among the State's numerous witnesses at the Petitioner's trial. While living in Centralia, the Petitioner wore his hair in braids and, upon second hand information, was known to carry a .25-caliber semi-automatic pistol.

During the summer of 2008, Burton and Finley purchased marijuana from Hamburg on the Petitioner's behalf. The Petitioner did not know that Hamburg was Burton's and Finley's supplier at the time, but he stated that he would rob their supplier if the supplier "skimped" him. The Petitioner also asked Burton how much marijuana the supplier kept on hand and complained about the amount that Burton had received.

On the morning of September 10, 2008, Brittany gave the Petitioner a ride to Hamburg's apartment, where the defendant purchased some marijuana. Taylor was also present, and while the Petitioner made the purchase, she and Brittany waited outside the apartment in Brittany's vehicle. Later that day, the Petitioner advised Queen that he might rob Hamburg of his marijuana and shoot Hamburg if necessary.

Later that night, Brittany gave the Petitioner another ride to Hamburg's apartment, believing that he was going there to purchase

another "bag of weed." Taylor was again present, and on this occasion, the Petitioner had Brittany drop him off and "wait down the road."

Inside Hamburg's apartment, the Petitioner pulled a gun and threatened to shoot Hamburg if Hamburg did not "give it to him." A struggle ensued, and Hunt pleaded with the Petitioner "to please not do this." At some point, Hunt tried to grab the gun when Hamburg had the Petitioner pinned against a wall, and the Petitioner fired a shot into the ceiling. As Hunt and Hamburg attempted to force the Petitioner out of the apartment, the Petitioner fired a second shot that struck Hamburg in the head. Hamburg fell to the floor, and Hunt used his cell phone to call 9-1-1. Hamburg later died as a result of the gunshot wound and a bag of marijuana was found on his person.

As the Petitioner ran from the scene of the crime, he used his cell phone to call Brittany and Taylor. When they picked him up several blocks away, the Petitioner was out of breath and looked kind of shook up." The Petitioner advised Brittany and Taylor that he had fired his gun, but he "didn't know if he hit anybody." Brittany subsequently dropped the Petitioner and Taylor off at Taylor's mother's house, and the Petitioner told Brittany to "keep [her] eyes and ears open."

Meanwhile, emergency medical responders were arriving at Hamburg's apartment, and the police were questioning Hunt about what had occurred. The police also interviewed Hunt's 8-year-old daughter, Tionna, who was in the hallway of the apartment during the incident. When trying to explain who had shot Hamburg, Hunt advised the police that she recognized the shooter but did not know

his name. She further advised that Hamburg "only associated with three black guys." One she knew as "D", another she knew as "Terrell or Terreek", who lived nearby, and "the other one was from Arkansas." Indicating that the shooter was the last person to call Hamburg on his cell phone, Hunt identified the Petitioner's cell phone number as possibly being the shooter's cell phone number.

Acting on Hunt's information that the shooter's name might have been "Terrell or Terreek", the police immediately began looking for Terrell Branch, who lived in Hamburg's neighborhood. After Branch's mother later brought him to the Centralia police department, the police arrested and temporarily detained him as a suspect. Branch had an alibi, however, and when Hunt was shown a photographic line-up that included his picture, she stated that he was one of the three black males who bought marijuana from Hamburg but was not the one who had entered her apartment and shot him. A few days later, when Hunt was shown another photographic line-up that included a picture of the Petitioner, she positively identified the Petitioner as the shooter, as she later would at trial. After further investigation, a warrant was issued for the Petitioner's arrest.

Approximately two to three hours after the shooting, the Petitioner boarded a train from Centralia, Illinois to Memphis, Tennessee. Before leaving town, he stopped by Queen's house and told Queen to advise Purwell that he had to "get ghost for a little while." The Petitioner also asked Queen to take possession of a bag of .25-caliber bullets, but Queen refused.

The morning after the shooting, the Petitioner's ex-girlfriend,

Pamela Hill, picked him up at the train station in Memphis and drove him to Arkansas. Later that day, the Petitioner called Brittany, and when she informed him that Hamburg was dead, he again told her to "keep [her] eyes and ears open and let him know what was going on."

Later that night, Taylor called Brittany, and Brittany drove her outside of town where she dumped the Petitioner's gun and bullets off of a bridge into a creek. A dive team later attempted to recover the gun but was unable to find it. At some point, Taylor also burned some clothing that the Petitioner left behind, the remains of which the police later discovered along with the Petitioner's Social Security card.

While in Arkansas, the Petitioner convinced Hill that they should promptly relocate to Oklahoma City and start a new life. In October 2008, the Petitioner was apprehended in Oklahoma, and he shaved his head before he was extradited back to Illinois.

Following his extradition, the Petitioner agreed to speak with detectives from the Centralia police department. When interviewed, the Petitioner claimed, among other things, that he knew nothing about the incident at Hamburg's apartment and had left Centralia because he was threatened by a drug dealer from Chicago. When the detectives advised the Petitioner that Brittany and Taylor were among the numerous people who talked to them during the course of their investigation, the Petitioner stated he did not speak with Brittany on the day Hamburg was shot.

While awaiting trial, the Petitioner spent time in the Clinton County jail with inmates Louis Lawson and Charles Lewis and discussed

his case with both of them. The Petitioner allegedly told Lawson that he had shot a man while trying to rob him of his "weed" and generally detailed what had occurred at Hamburg's apartment. The Petitioner allegedly told Lewis, among other things, that he had shot a man in the head during "a drug deal that went bad" and that he "almost got away with it."

While Taylor was incarcerated in the Clinton County jail with inmate Kristen Brazelton, Brazelton heard the Petitioner berating Taylor from a neighboring pod. The Petitioner was allegedly angry with Taylor because she had given a statement to the detectives who were investigating Hamburg's murder. On another occasion, inmate Vanessa LeMar allegedly heard the Petitioner state to Taylor, "[Y]ou switched on me."

In the Fall of 2008, when Deputy Donald Hohman of the Clinton County Sheriff's department was escorting the Petitioner to a pre-trial court appearance, the Petitioner noticed his "D. Hohman" name tag and correctly deduced that he was related to Brittany. The Petitioner told Deputy Hohman that "it was all Brittany's fault that he was even here in trouble" and that he ought to just wipe out all of [the] Hohmans."

In June 2009, the Petitioner was housed with inmate Devon Smith when investigators collected samples of the Petitioner's hair. Although the Petitioner told Smith that "he didn't do it," the Petitioner was nevertheless "worried" after the samples had been collected.

Prior to trial, the Petitioner was furnished funds with which

to hire a private investigator to assist in his defense. The record indicates that the investigator canvassed Hamburg's neighborhood for potential witnesses and interviewed several individuals, including Patricia Phillips, who lived approximately three blocks away from Hamburg's apartment. The Petitioner later listed Phillips as a potential witness and provided the State with a "summary of the investigative interview with Ms. Phillips."

The State filed a motion in limine seeking to bar Ms. Phillips' testimony as irrelevant. At a hearing on the motion, the parties generally agreed that Ms. Phillips would testify that while walking her dog on the night of the shooting, she saw a black male wearing a dark hoodie, a do-rag, and white tennis shoes running in the vicinity of Hamburg's apartment, and she noticed the same individual in the area two nights later. The State argued that Phillips' proposed testimony was speculative and failed to establish a connection to Hamburg's murder. The State also noted that it was "[u]nclear what time" Ms. Phillips had seen the black male running. In response, noting that the police never interviewed Ms. Phillips, defense counsel maintained that Ms. Phillips' observation would support the Petitioner's arguments that "Branch was the Shooter" and that the police had failed to conduct a full investigation. The trial ultimately granted the State's motion in limine, finding that Ms. Phillips' testimony would be "essentially irrelevant."

At trial, the Petitioner called Chris Mollett, who explained that he was among the inmates that Deputy Hohman had escorted to court

when the Petitioner had allegedly threatened the Hohman family. When asked about the threat, Mallett testified he had not heard "anything like that."

The Petitioner also called Illinois State Police Forensic scientist Glenn Schubert, who had microscopically examined and compared the hair samples collected from the Petitioner with the four Negroid hair fragments found on the shirt that Hamburg had been wearing when he was shot. Schubert testified that the Negroid hair fragments from the shirt were dissimilar to the Petitioner hair samples and did not originate from the Petitioner. Schubert testified that no samples other than the defendant's [Petitioner] had been submitted for comparison.

The Petitioner's private investigator testified that the Petitioner had police reports and other discovery materials in his possession while he was incarcerated in the Clinton County jail. During closing arguments, defense counsel maintained, among other things, that the State's "parade of jailhouse switches" had access to the materials.

In October 2009, the Petitioner filed a motion for a new trial. The motion set forth numerous claims of error, one of which was the trial court erred in granting the motion to exclude Ms. Phillips' testimony. In November 2009, the trial court denied the Petitioner's motion for a new trial, entered judgment on the jury's verdict, and sentenced the defendant to a 40-year term of imprisonment. When imposing sentence, the court opined that although the Petitioner might not have made the "conscious decision" to kill Hamburg "in cold blood," it was apparent that when he went to Hamburg's apartment

on the night in question, he was armed with a gun and "was up to no good." The Court also noted the persuasiveness of "the evidence concerning the phone calls on the night of the murder." The Petitioner subsequently filed a motion to reduce sentence, which the trial court denied following a hearing. In December 2011, the Petitioner's conviction was affirmed on direct appeal.

In August 2012, the Petitioner filed a pro se postconviction petition pursuant to the Illinois Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 2012)). The Petitioner's petition alleged that he was innocent and had been denied the effective assistance of both trial counsel and appellate counsel. The petition referenced, among other things, the trial court's exclusion of Ms. Phillips' proposed testimony.

In February 2014, appointed counsel filed an amended postconviction petition on the Petitioner's behalf, which was followed by a second amended petition filed in October 2014. The Petitioner's second amended petition alleged, among other things, that counsel on direct appeal was ineffective for failing to challenge the trial court's ruling barring Ms. Phillips' testimony and the need for a record to be made. In December 2014, the State filed a motion to dismiss the Petitioner's second amended petition.

In March 2015, the trial court held a hearing on the State's motion to dismiss and ultimately granted it. After noting that the Judge presided over the Petitioner's trial and "all of the pretrial proceedings of any consequence," the Court stated that it was "satisfied" the State's motion to dismiss the Petitioner's second amended petition should be

granted. The Fifth District Appellate Court held: "The trial court did not err in granting the State's motion to dismiss the Petitioner's Second amended petition for postconviction relief where he failed to make a substantial showing that he was denied the effective assistance of appellate counsel." This judgment was made on March 2018. The Petitioner then filed a Petition for Leave to Appeal and on September 26, 2018, The Illinois Supreme Court denied Petitioner's request.

Argument

Petitioner, Anthony T. Jackson has attempted, at every stage, to raise the claim of violation of Illinois Post Conviction Hearing Act 725 ILCS 5/122-1 et. seq. Petitioner's evidentiary facts of the Constitutional violations within his Petition have never been fully adjudicated on its merits. As a freestanding claim of ineffective assistance of trial counsel and Appellate Counsel, a hearing must be held as to achieve a record of the "reasonable probability" of relief. *People v. Tate*, 2012 IL 112214; *People v. Erickson*, 161 Ill.2d 82, 88 (1994) "But a claim based on what ought to have been done may depend on proof of matters which could not have been included in the record precisely because of the allegedly deficient representation." *Id.* Thus, this court's ruling has "repeatedly noted that a default, may not preclude an ineffective assistance claim for what trial counsel ought to have done in presenting a defense." *People v. West*, 187 Ill.2d 418, 427 (1999). The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the accused's version of the facts. Just as an accused has the right to confront the State's Attorney witnesses for the purpose of challenging their testimony, the defense has the right to present their own witnesses so the jury may decide what the pure truth. See *Washington v. State of Texas*, 388 U.S. 14, 18 L.E.d 1029, 87 S.Ct. 1920 (1967) "In all criminal prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witnesses in his favor." A right the Petitioner was denied.

Petitioner's request for certiorari is due to the Illinois Court of appeals' arbitrary process for denying Post-Conviction hearing. While there is no constitutional right to post-Conviction review, when a state elects to provide an avenue for Post-Conviction relief, the process must comport with the protections of the 14th Amendment. *Yates v. Aiken*, 484 US 211, 217-218 (1988) ("When a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution - and, in particular, in accord with the Due Process Clause.").

The procedure in Illinois lacks due process protections. The remedy sought by the Petitioner is an elaboration of the right recognized in *McCoy v. Court of Appeals of Wisconsin*, 486 US 429, 443 (1988). The rationale of *McCoy* requires the same due process for state post-convictions petitions, wherein the petitioner's claims are not reviewed fully.

Petitioner has personally demanded that his Illinois statutory right be reviewed by every court in which he has pleaded for nearly 10 years. No court has allowed Mr. Jackson to argue his claims on its merits, which is why the United States Supreme Court should grant certiorari.

Date: 12/23/18

X Anthony T. Jackson
Anthony T. Jackson