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IN THE
SUPREME COURT OF THE UNITED STATES

ROUMMEL INGRAM - PETITIONER

VS.

JOHN PRELESNIK - RESPONDENT

PETITION FOR REHEARING

NOW COMES Petitioner-Appellant, Roummel Ingram, pro se, and petitions this Court for rehearing of his appealable claims pursuant to United States Supreme Court Rule 44, and states the following in support thereof:

PETITIONER'S INABILITY TO OBTAIN FURTHER PERSUASIVE EVIDENCE DESPITE ADEQUATE DUE DILIGENCE COMBINED WITH THE DENIAL OF AN EVIDENCIARY HEARING QUALIFIES AS AN INTERVENING CIRCUMSTANCE OF A SUBSTANTIAL EFFECT.

Petitioner first points out that the federal district court was mistaken in its initial assessment of the Fourth Amendment claim which his ineffective assistance of counsel claim is founded upon. The district court somehow construed Petitioner's argument as attacking the fairness of the photographic line-up in question, when in fact, Petitioner's contention in his petition for writ of habeas corpus was, as it has always been throughout his pursuit of post-conviction relief, that his arrest was not supported by any positive identification from a photographic line-up whatsoever and that police reports, to the contrary, are false information that was knowingly offered. *Ingram v. Prelesnik*, Case No. 12-13107 (ED Mich., July 12, 2016 (Opinion and Order Denying Petition for Writ of Habeas Corpus)).

Secondly, in denying Petitioner's motion for an evidentiary hearing, the district court ruled: "To the extent that the motion can be construed as a request for an evidentiary hearing before this Court, the petitioner has failed to rebut the presumption of correctness of the state court determinations." "*Ingram v. Prelesnik*, Case No. 12-13107 (ED Mich., August 17, 2016 (Order Denying Motions For Reconsideration and Evidentiary Hearing)). Once again, the district court's reasoning is wide of the mark whereas the state court has never made any determinations concerning probable cause to arrest during Petitioner's case-in-chief or appeal.

The United States Court of Appeals for the Sixth Circuit noted the disadvantage its court was at by not having any testimony from the arresting officers involved in the collective that brought Petitioner into police custody to consider. Yet and still, as opposed to remanding Petitioner's case and directing the lower court to elicit such testimony, the panel went on to rule that despite the fact that the respondent waived any claim that Petitioner's arrest was supported by probable cause by failing to raise the argument in his appellate brief, the burden remained on Petitioner to show his counsel's ineffectiveness and ultimate entitlement to relief. The Sixth Circuit panel also rendered its opinion based on an interpretation of the information in the record that does not equate with the facts.

In regard to Petitioner's illegal warrantless arrest issue, the Sixth Circuit found: "Part of the difficulty in assessing Petitioner's Fouth Amendment claim on the merits arises from the fact that the state trial court was never requested to hold a hearing and elicit testimony from the arresting officer. However, after evaluating the information in the record --- the police reports, affidavits, and officer narratives ----- it is our view that the arresting officer had probable cause to arrest Ingram. ... Shortly after Ingram left his residence, the surveiling officers received word from the St. Clair Shores Police Department that Aisha Mercer, the eyewitness victim of one of the robberies, identified Ingram from a photo line-up. On the basis of this information, the officers had probable cause to arrest

Ingram.” *Ingram v. Prelesnik*, Case No. 16-2172 (6th Cir., April 4, 2018 (Opinion Affirming Judgement of the District Court)). The Sixth Circuit did not address the sentencing hearing transcript excerpt from the case involving Aisha Mercer that Petitioner submitted as Appendix E to his motion for an evidentiary hearing in which the Macomb County (where St. Clair Shores PD is located) prosecution revealed that Petitioner was initially arrested for the crime(s) committed in Oakland County (where Farmington Hills PD is located.)

After the Sixth Circuit's affirmative opinion, Petitioner immediately began trying to obtain more evidence that would solidify his illegal arrest argument, i.e., the entire police reports from each department involved and the actual photographic line-ups that were shown to the victims. Petitioner sought out this information in the hopes that certain information in the reports, or the absence thereof, or the presentation or documented times and dates of the administration of the photographic line-ups in question would prove lack of mistake and intentional falsehood on the arresting officers' parts. The only way for Petitioner to establish his ineffective assistance of counsel claim is by negating the Sixth Circuit's view that the information entered in the arresting officers' and lead detective's reports, narratives, and affidavits are merely mistakes or scrivener's errors. Without the benefit of a full and fair evidentiary hearing, Petitioner has been arbitrarily prevented from doing so. Petitioner's diligent efforts since receiving the Sixth Circuit's unfavorable opinion serve as sufficient intervening circumstances of a substantial effect, requiring rehearing of this Court's May 28, 2019 order denying his petition for writ of certiorari.

United States Supreme Court Precedent

Not long after the Sixth Circuit handed down its opinion in Petitioner's case, this Court handed down its ruling in *Collins v. Virginia*, 138 S. Ct. 1663 (May 29, 2018). In *Collins*, this Court ordered a remand to resolve the question of reasonableness of a warrantless action under the Fourth Amendment. In a concurring opinion, after agreeing that the Court correctly resolved the Fourth Amendment question before it, Justice Thomas opined: "Notably the only reason that *Collins* asked us to review this question is because, if he can prove a violation of the Fourth Amendment, our precedents require the Virginia courts to apply the exclusionary rule and potentially, suppress the incriminating evidence against him."

In light of *Collins*, Petitioner cites this Court's longstanding practice that in the face of a close question as to the reasonableness of any action taken without a warrant under the Fourth Amendment, a remand for the purpose of resolving such a question is required to allow a petitioner the opportunity to prove whether or not said action was reasonable. In the event that the warrantless overstep is in fact, unreasonable and in violation of the Fourth Amendment, the exclusionary rule is applicable.

Although Petitioner's case is distinguishable from *Collins* in that *Collins* dealt with a free-standing Fourth Amendment claim and a petition for writ of certiorari to the state court, the crux of the matter is the same, and Petitioner's argument is preserved. Petitioner is seeking relief due to ineffective assistance of counsel as a result of trial and appellate counsels' failure to raise a viable, available, and potentially outcome determinative Fourth Amendment claim. In accordance with *Kimmelman v. Morrison*, 477 U. S. 365, 375 (1986) (holding that "habeas petitioner must show that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice."). It is imperative for Petitioner to prove the merit of his Fourth Amendment claim in order to be able to cement his ineffective assistance of counsel claim.

An important factor to consider when comparing Petitioner's case to *Collins* is that this Court reversed and remanded Collins' case even after a full suppression hearing addressing the Fourth Amendment issue had been held in the state court. Petitioner has yet to be afforded such a hearing. This Court has also previously ordered a case remanded to allow a petitioner to advance their argument on Sixth Amendment ineffective assistance of counsel grounds, and expand the record, after the denial of post-conviction relief by the state courts without the benefit of an evidentiary hearing. See *Padilla v. Kentucky*, 559 U. S. 356 (2010).

Substantial Intervening Circumstances

Subsequent to the Sixth Circuit issuing an opinion where information and offers of proof substantiating Petitioner's ineffective assistance of counsel claim were written off as mere mistakes and conflated facts, Petitioner immediately began seeking out more evidence that would reinforce his illegal arrest claim. Specifically, the photographic line-up in question and/or the entire police reports. There are documents referred to in the portions of the police reports that Petitioner does currently have in his possession that he has never seen, including the actual photo line-up at issue.

Petitioner contacted the St. Clair Shores District Court. (St. Clair Shores District Court April 19, 2018 Letter in Response – APPENDIX A). The Sixth Judicial Circuit Court of Michigan, which is the court that represents Oakland County, the county where the arresting police department (Farmington Hills) is located. (Sixth Judicial Circuit of Michigan April 23, 2018 Letter in Response – APPENDIX B). The Farmington Hills District Court. (Farmington Hills District Court April 24, 2018 Letter in Response – APPENDIX C). The Macomb County (which is the county where St. Clair Shores is located) Clerk's Office. (Macomb County Clerk's Office May 3, 2018 Letter in Response – APPENDIX D). The St. Clair Shores Police Department. (St. Clair Shores Police Department April 29, 2019 Letter in Response – APPENDIX E). The Farmington Hills Police Department. (Farmington

Hills Police Department April 29, 2019 Response Form – APPENDIX F). Attorney Steven G. Freers, Petitioner's court appointed representation in St. Clair Shores/Macomb County. (Steven G. Freers May 14, 2019 and May 29, 2019 Letters in Response – APPENDICES G and J). Attorney Michael J. McCarthy, Petitioner's court appointed representation in Farmington Hills/Oakland County. (Michael J. McCarthy May 17, 2019 Letter in Response – APPENDIX H). Attorney Gary L. Kohut, Petitioner's court appointed appellate representation out of Macomb County. (Gary L. Kohut May 23, 2019 Letter in Response – APPENDIX I).

Throughout the year in between Petitioner's affirmative judgement in the Sixth Circuit (U. S. Court of Appeals) and his recent denial of writ of certiorari in this Court, he attempted to contact Attorney's Robbie Manhas, who prepared his brief on appeal in the U. S. Sixth Circuit; Sanford A. Schulman, who prepared his first MCR 6.500 motion; Michael B. Skinner, who prepared his brief on direct appeal out of Oakland County; and Jonathan Sacks, who was Petitioner's first court appointed appellate attorney on direct appeal out of Oakland County that later withdrew as counsel. Petitioner has been unsuccessful in getting any responses from them to date.

On or about May 23, 2019, Private Investigator, Tim Lennon, was contacted by Petitioner, but Petitioner is unable to pay the requisite fee for Mr. Lennon's services due to indigency.

Petitioner has made numerous efforts to get a hold of the pertinent evidence mentioned above with plans on submitting it to this Court with his initial petition. After his filing was submitted, he remained hopeful that he could obtain the relevant documentation and file it along with a Rule¹⁵ supplemental brief while his petition was still pending.

Had Petitioner been able to obtain these documents, something as simple as a time and date indicating when the photo line-up was conducted, or the suggestiveness of the photos included in the

array could serve to prove lack of mistake and the purposefulness of the police conduct that the Sixth Circuit viewed as reasonable and insignificant mistakes, as well as ineffective assistance of counsel. More importantly, Petitioner's trial counsel has never been called to testify as to why he informed Petitioner that his arrest was supported by a warrant instead of reviewing, and acknowledging, the conflicting information in the police reports where probable cause is concerned, and challenging the prosecution to validate Petitioner's warrantless arrest. By the U. S. Sixth Circuit Court of Appeals not accepting Petitioner's offers of proof at face value, and placing the burden on him to prove his trial counsel's ineffectiveness without any testimony from trial counsel explaining why he chose the trial strategy he did, the court made it virtually impossible for Petitioner to prove ineffectiveness. The proper arena for the discovery and testimony Petitioner is trying to procure would have been, and still is, a full and fair evidentiary hearing.

This Court should not overlook the "difficulty" the Sixth Circuit Court of Appeals referenced in considering Petitioner's Fourth Amendment claim. This is indicative of the fact that its analysis was skewed at the outset. Furthermore, the Sixth Circuit made its ruling under its view of the facts surrounding Petitioner's Fourth Amendment claim, absent any determination made from an assessment of those same facts by the trial court, because no such determinations exist.

The U. S. Sixth Circuit Court of Appeals' view of the alleged facts that establish probable cause contradict the information in Petitioner's offers of proof relating to probable cause as it is sworn to on oath verbatim, i.e., lead detective Bonnie Unruh's statement in search warrant affidavit that "St. Clair Shores Detectives stated there was probable cause to arrest Roummel Ingram for the Armed Robbery that occurred at Wireless Giant". (See Motion For Evidentiary Hearing, APPENDIX A). The Sixth Circuit panel inferred that Detective Unruh simply made a mistake in entering the information connected with Wireless Giant instead of Citi-Financial and/or was mistakenly told that Petitioner was

identified in connection with the Wireless Giant Robbery instead of Citi-Financial.

Wireless Giant and Citi-Financial are both located in St. Clair Shores, which is located in Macomb County. Nevertheless, the only time Petitioner's arrest was addressed before a court of law, which was during a very brief exchange at Petitioner's Macomb County sentencing hearing, revealed that he was arrested on July 12, 2005 neither for the Wireless Giant or the Citi-Financial robberies, but for Oakland County crimes. (See Motion For Evidentiary Hearing, APPENDIX E). There is also nothing contained in the documents generated by the St. Clair Shores Police Department that Petitioner submitted as offers of proof which verify that the photographic line-up in question was conducted at any time prior to when Petitioner was taken into custody on July 12, 2005, or that their department ever directed Oakland County (Farmington Hills) officials to arrest Petitioner.

Unlike *Collins*, where some members of this Court were reluctant in granting a writ of certiorari with concerns that their ruling may have exceeded the scope of its ability to disturb prior state court determinations, in this instance, there are no relevant state court determinations on this issue to be upheld.

The state court trial judge is the primary trier of fact, while this Court and its subordinate federal circuits and districts are the foremen and forewomen of the Constitutional laws of the land. As such, just as this Court sets the ultimate precedents in rectifying mistakes of law, with reasonable deference shown to state court decisions, it should be left to the state courts to rectify mistakes made in determining the facts.

Without distorting the straightforward interpretation of the materials submitted by Petitioner in support of his arguments, the United States District Court for the Eastern District of Michigan, and the United States Court of Appeals for the Sixth Circuit could not have refuted his Fourth Amendment and

ineffective assistance of counsel claims. Due to the repeated denials of an opportunity to expand the record and clarify any misconceptions, despite setting forth a colorable claim and diligently pursuing an evidentiary hearing in every state and federal court, at every step of the appellate process, police misconduct and evidence that the exclusionary rule was specifically cultivated to deter has been shielded. As a result, Petitioner has been prevented from making out his trial and appellate counsels' deficient and prejudicial performance.

The instant case is unusual and complex, and the interests of justice warrant a full and fair evidentiary hearing.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that this Court reverse its May 28, 2019 order and issue a writ certiorari, or in the alternative, set aside its judgement and direct the Farmington Hills and St. Clair Shores police departments to produce their police reports in their entirety as discovery. 28 U.S.C. sec. 2106.

Respectfully Submitted,

Dated: June 21, 2019


(X)

Roummel Ingram 398240
Pro Se
Gus Harrison Correctional Facility
2727 East Beecher St.
Adrian, MI 49221

No. 18-8621

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CERTIFICATION OF PRISONER, PRO SE

I, Roummel Ingram, certify that the grounds in the instant petition are limited to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented, and is presented in good faith and not for delay.

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

Executed on July 10, 2019

Roummel Ingram
Roummel Ingram