ORIGINAL

No. 18-8706

FILED
DEC 07 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DONN DEVERAL MARTIN — PETITIONER
(Your Name)

vs.

LORIE DAVIS, DIRECTOR, — RESPONDENT(S)
TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ)
ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS (TCCA)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONN DEVERAL MARTIN (01454022)
(Your Name)

4 D 02B; W.P. Clements Unit; 9601 Spur 591
(Address)

Amarillo, Texas 79107-9606
(City, State, Zip Code)

N.A. (INMATE)
(Phone Number)

QUESTION(S) PRESENTED

Question One. Does RULE 10, of the SCOTUS Rule Book, still apply, when the Texas Court of Appeals (TCCA) ignores the long-standing ruling of the SCOTUS that a conviction obtained from an act of perjury MUST BE SET ASIDE? Refer to U.S. v. Agurs, 427 U.S. 97, 103 (1976); Napue v. Illinois, 360 U.S. 264, 269 (1959); and, Mooney v. Holohan, 294 U.S. 103, 112 (1935).

Question Two. Does the SCOTUS precedent still hold that, if a defendant documents a legitimate, society accepted, subjective, expectation of privacy, with his exclusive password protected computer, no evidence obtained from a warrantless search and seizure, can be admitted at the defendant's trial? Refer to Katz v. U.S., 389 U.S. 347, 361 (1967); Bond v. U.S., 529 U.S. 334, 338-39 (2000); and, Minnesota v. Olson, 495 U.S. 91, 95-96 (1990).

Question Three. Since many innocent defendants have been wrongly convicted by the State using "junk science" evidence, and falsified data, isn't it time for the SCOTUS to issue a ruling denouncing the use of "junk science," to obtain wrongful convictions, as was done in Petitioner's case? Refer to Petitioner's APPENDIX B-A1-A7.

Question Four. Shouldn't the SCOTUS apply its ruling in McQuiggin v. Perkins, 569 U.S., 133 S. Ct. 1924 (2013), to Petitioner's case, and correct a MANIFEST MISCARRIAGE OF JUSTICE, by GRANTING Petitioner's Claim of Actual Innocence?

QUESTION FIVE. Petitioner filed 9 Applications For Writs of Habeas Corpus based on Article 11.073 "junk Science" Allegations. The trial judge, Hon. John Woodlock, opined that all 9 cases were interconnected, and one could not be considered separate from the others. The TCCA denied 8 of the 9 Applications, and withheld Cause No. 1017662-A, as commanded by the Texas Forensic Science Commission, for a second laboratory analysis to challenge the initial report published by the State's "DNA expert" Connie Patton (Patton), that was based on "junk Science" technology and aggravated perjury. Should the SCOTUS exercise its supervisory authority and overrule the TCCA's denial of the 8 Applications based on the review of those Applications as connected to the one that was withheld for further scientific analysis?

QUESTION SIX. Petitioner listed 8 FACTUAL DOCUMENTATIONS that prove his constitutional rights under the 1st, 4th, 5th, 6th, and 14th Amendments of the U.S. Constitution were egregiously violated by the State, and resulted in Petitioner's wrongful convictions. Should the SCOTUS exercise its authority and correct this MANIFEST MISCARRIAGE OF JUSTICE and GRANT Petitioner's claim of Actual Innocence.

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED (part 2)

CASES — PAGE NUMBER

SUPREME COURT CITATIONS (cont)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:** N.A.

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the 2nd Court of Appeals court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**: N.A.

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 09/12/2018 A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N.A., and a copy of the order denying rehearing appears at Appendix N.A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N.A. (date) on N.A. (date) in Application No. ___A N.A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION-AMENDMENT ONE. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONSTITUTION-AMENDMENT FOUR. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath, or affirmation, and particularly describing the place to be searched, and the persons, or things to be Seized.

U.S. CONSTITUTION-AMENDMENT FIVE. No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment, or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war, or public danger; nor shall any person be subject for the same offense, to be put in jeopardy twice, of life or limb; nor shall he be compelled, in any case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONSTITUTION-AMENDMENT SIX. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the

assistance of counsel, for his defense.

U.S. CONSTITUTION-AMENDMENT FOURTEEN (SECTION 1, ONLY).

All persons born, or naturalized, in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make, or enforce, any law which shall abridge the privileges, or immunities, of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person, within its jurisdiction, the equal protection of the laws.

STATEMENT OF THE CASE

FACT ONE. Petitioner filed (9) Art. §11.073 Applications For Writs of Habeas Corpus, in the Texas Court of Criminal Appeals (TCCA), based on "Junk Science" Technology, and falsified evidence, on May 12, 2017.

FACT TWO. Petitioner claimed that the State obtained Petitioner's convictions by the use of: (1.) aggravated perjury; (2.) falsified evidence; (3.) illegally seized evidence; and, (4.) "Junk Science" technology, that violated Petitioner's constitutional rights under the 4th, 5th, and 14th Amendments of the U.S. Constitution, which validates Petitioner's claim of Actual Innocence. McQuiggin v. Perkins, 569 U.S. 133 S. Ct. 1924 (2013); House v. Bell, 547 U.S. 518, 536-37 (2006); Minnesota v. Olson, 495 U.S., 110 S. Ct. 1684 (1990); and, Kimmelman v. Morrison, 477 U.S. 1068 S. Ct. 2574 (1986).

FACT THREE. On 06/21/2017, the TCCA, after granting the "findings" of the State Habeas Judge (who was NOT the trial judge) a "presumption of correctness", without a full and fair evidentiary hearing, denied 8 of the 9 Applications, and withheld the Art. § 11.073 Application pertaining to Cause No. 1017612, that substantiated the FACT that the State used "Junk Science" Technology to obtain Petitioner's wrongful convictions. (APPENDIX B; EXHIBITS A1-A10) The TCCA ignored the fact that many Circuit Courts of Appeal and the SCOTUS have ruled that the "findings" of a State Habeas Judge, WHO IS NOT THE TRIAL JUDGE, cannot be granted a "presumption of correctness" without conducting a full and fair evidentiary hearing (a "paper hearing" will not suffice). No such hearing was conducted. Netherly v. Collins, 993 F.2d 1154, 1157

n.8 (5th Cir. 1993), cert. denied, 114 S.Ct. 1416 (1994); Perillo v. Johnson, 79 F.3d 441 (5th Cir. 1996); Armstead v. Scott, 37 F.3d 202, 207 (5th Cir. 1994); Townsend v. Sain, 372 U.S. 293 S.Ct. 745 (1963); Demosthenes v. Baal, 110 S.Ct. 2223-25, (1990); and Williams v. Taylor, 529 U.S. 362, 435, 130 S.Ct. 1495 (2000), all support Petitioner's claim that he had a constitutional right to a full and fair evidentiary hearing before the State Habeas judge that is protected by the 1st Amendment of the U.S. Constitution. The Habeas Judge and the TCCA judges violated Petitioner's right to redress his grievances in a full and fair evidentiary hearing, and the SCOTUS MUST grant Petitioner's Petition and set aside all the convictions and at the least, remand for a full and fair evidentiary hearing.

FACT FOUR. All 9 Ort. § 11.073 Applications For Writ Of Habeas Corpus documented the FACT that the State, using "junk science" technology, violated Petitioner's constitutional rights under the 4th, 5th, and 14th Amendments of the U.S. Constitution. (APPENDICES B, C, D, E, F, and G). Specifically, the State used (1.) aggravated perjury; (2.) falsified evidence; (3.) illegally seized evidence; and, (4.) "junk science" technology, to obtain ALL of Petitioner's convictions. Many Circuit Courts of Appeal, and the SCOTUS, have ruled that when an act of perjury contributes to a conviction, that conviction MUST BE SET ASIDE. U.S. v. Agurs, (supra); Napue v. Illinois (supra); White v. Ragen, 324 U.S. 760, 65 S.Ct. 978 (1945); Mooney v. Holohan, 294 U.S. 103, 112 (1935); and Demarco v. U.S., 928 F.2d 1074 (11th Cir. 1994).

FACT FIVE. The SCOTUS should be aware of the FACT that no fewer than 4 acts, by 4 different State Witnesses, of aggravated perjury, were committed, and resulted in ALL of Petitioner's convictions. (APPENDICES B, C, D, E, F, and G). Especially egregious is the aggravated perjury committed by Detective Mike Weber who posed Petitioner in a simulated state of circumcision, took photos of the fake state of circumcision, then committed aggravated perjury, by testifying, using the fake photos, that Petitioner, like the actual perpetrator in the photos used to convict Petitioner, is circumcised. (APPENDIX C; EXHIBITS B1-B3).

FACT SIX. The SCOTUS should also be aware of the FACT that ALL of Petitioner's convictions were based on the photos illegally seized by Detective Mike Weber when he coerced Petitioner's then wife, Beverly Cunningham, into surrendering Petitioner's password protected computer. Many Circuit Courts of Appeal, and the SCOTUS, have ruled that a computer owner, who uses an exclusive password to protect the privacy of his computer, has a legitimate, subjective, societally accepted, EXPECTATION OF PRIVACY, that is protected by the 4th Amendment of the U.S. Constitution. Katz v. U.S., 389 U.S. 347, 361 (1967); Bond v. U.S., 529 U.S. 334, 338-339 (2000); Kimmelman v. Morrison, 477 U.S. 365, 382-83 (1986); Minnesota v. Olson, 495 U.S. 91, 95-96. Ct. 1684 (1990); and U.S. v. Turner, 169 F.3d 84, 89 (1st Cir. 1999). All convictions MUST BE SET ASIDE because of this constitutional violation.

REASONS FOR GRANTING THE PETITION

REASON ONE. In Petitioner's Art. 11.073 "Junk Science" Applications For Writs Of Habeas Corpus, Petitioner documented the fact that "Junk Science," was used by the State's forensic DNA expert, Constance Patton (Patton), to obtain all of Petitioner's wrongful convictions (See APPENDICES A; B; C; D- EXHIBITS A1-A7). The entire trial was fatally tainted by Patton's aggravated perjury, and her use of falsified evidence. The Supreme Court of the United States (SCOTUS) should grant this Petition, vacate the judgment of the Texas Court of Criminal Appeals (TCCA), and Remand the case back to the TCCA, with a ruling that ALL convictions are reversed, and Petitioner is granted the status of ACTUAL INNOCENCE.

REASON TWO. In Petitioner's Art. 11.073 "Junk Science" Applications For Writs Of Habeas Corpus, (11.073 Applications), Petitioner documented the FACT that Petitioner's constitutional rights under the 1st, 4th, 5th, 6th, and 14th Amendments, of the U.S. Constitution, were egregiously violated by the State, when the prosecution used aggravated perjury, falsified evidence, illegally seized evidence, "Junk Science" evidence, and the ineffective assistance of Petitioner's trial and appellate counsel, to obtain ALL of Petitioner's wrongful convictions. (See APPENDICES C; D; E; F and G). Absent those egregious violations by the State, no rational juror would have found Petitioner guilty of ANY crime. A MANIFEST MISCARRIAGE OF JUSTICE, has been perpetrated against Petitioner, by the State of Texas, by those constitutional violations, and support Petitioner's claim of ACTUAL INNOCENCE, that MUST be granted by the SCOTUS after a judicious review of this Petition.

REASON THREE: By granting the "findings" of the State Habeas Judge, WHO WAS NOT THE TRIAL JUDGE, a "presumption of correctness," and denying Petitioner's 11.0730 applications, the TCCA, in total defiance of many rulings of many Circuit Courts of Appeal, and the SCOTUS, openly condoned the use of: (1.) "Junk Science" evidence; (2.) "Junk Science" falsified evidence; (3.) aggravated perjury; (4.) illegally seized evidence; and (5.) the ineffective assistance of trial and appellate counsel, to obtain ALL of Petitioner's wrongful convictions. The injudiciousness, exhibited by the TCCA, sets a very bad precedent for subsequent cases, and demands the exercise of the SCOTUS's supervisory power to correct the unacceptable, judicially unconstitutional, actions of the TCCA. Perillo v. Johnson, 79 F.3d 441 (5th Cir. 1996) ruled that "when the State Habeas Judge, is NOT THE TRIAL JUDGE, he/she cannot supplement affidavits with his/her own recollection of the trial and counsel's performance in it; consequently, "findings of facts" are NOT entitled to a presumption of correctness. Nethery v. Collins, 993 F.2d 1154, 1157, n.8 (5th Cir. 1993), cert. denied, 114 S.Ct. 1416 (1994); Armstead v. Scott, 37 F.3d 202, 207 (5th Cir. 1994); Townsend v. Sain, 372 U.S. 293 (1963); and Demosthenes v. Baal, 110 S.Ct. 2223, 2225 (1990) per curiam (quoting 28 U.S.C. §2254(d)(8), all agree with Perillo v. Johnson (supra), and insist that when the State Habeas Judge IS NOT THE TRIAL JUDGE, his/her "findings" CANNOT BE GRANTED A PRESUMPTION OF CORRECTNESS. The TCCA decided an important federal question that

REASONS FOR GRANTING THE PETITION (pg. 3)

conflicts with relevant decisions of the SCOTUS (SCOTUS RULE 10-C), and TCCA's judgment MUST BE VACATED, and Petitioner's claim of ACTUAL INNOCENCE MUST BE GRANTED. REASON FOUR. Petitioner has diligently fought his wrongful convictions, and incarceration, for 12 1/2 years, and NO COURT has been able to offer a scintilla of genuine, relevant, non-conclusory, truthful argument, that negates, or rebuts logically, ANY of Petitioners claims of FACTUAL DOCUMENTATION of his ACTUAL INNOCENCE. This Court MUST correct this MANIFEST MISCARRIAGE of JUSTICE and order Petitioner's immediate exoneration.

CONCLUSION

The foregoing REASONS FOR GRANTING THE PETITION justify (1.) the granting of the Petition; (2.) the vacating of the TCCA judgment, and, (3.) setting aside ALL convictions, with prejudice.

~~The petition for a writ of certiorari should be granted.~~

Respectfully submitted,

Dana Deveral Martin

Date: December 07, 2018