

No. 18-9153

IN THE
SUPREME COURT OF THE UNITED STATES

Albert Randolph — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Albert Randolph
(Your Name)

Rt. 2 Box 4400
(Address)

Gatesville, Texas 76597
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

The Court of Criminal Appeals erred in refusing to take action, where prosecution withheld favorable material evidence upon request, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

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:

RELATED CASES

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STATUTES AND RULES

<u>Tex. Code Crim. Proc. art. 11.07 § 4(a)</u>	<u>3, 4, 6</u>
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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**:

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

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 4/3/2019.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Fourteenth Amendment

All person 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.

Texas Code of Criminal Procedure, Article 11.07 § 4(a)(1)(2)

(a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:

(1) the current claims and issue have not been and could not have presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claims was unavailable on the date the application applicant filed the previous application; or

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

STATEMENT OF THE CASE

Prosecutor was relying upon a sexual assault evidence Collection Kit, a pair of panties and a pair of boxer shorts forward to the Texas Department of Public Safety for DNA testing to establish was the Petitioner the person who sexually assaulted Stanesha Ross. I CR 1, 49,²

Petitioner trial counsel requested for disclosure of all scientific testing results. I CR 45-47. Prosecutor disclose a DNA report, relating to the boxer shorts. Supp. CR 10.²

After exhausting all state's remedies on appeal. Petitioner requested for addition DNA testing. Tex. Code, Crim. Proc. art. 64.01, (Filed with the District Court February 4, 2014). Petitioner gain access to a DNA report from the Texas Department of Public Safety relating to the testing results from the sexual assault evidence Collection Kit and the panties, exculpatory evidence, in the possession of the prosecution prior to trial. App.³

After further investigation into all the reports, records, files, and evidence offered (including testimonys) and admitted at trial. Petitioner filed a state post-conviction. App. The Court of Criminal Appeals dismissed the application. (Appendix 'A')

¹⁻²

The Clerk's Record is designated as "CR" and "Supp. CR".

³ Application for Writ of Habeas Corpus is designated as "App".

REASONS FOR GRANTING THE PETITION

United State Court has decided an important federal question in a way that conflicts with a decision by a state court of last resort.

The Court of Criminal Appeals refuse to consider the merits under Tex. Code Crim. Proc., art. 11.07 § 4(a)(2), and dismissed the application on grounds of Tex. Code Crim. Proc., art. 11.07 § 4(a)(1).

This Court has repeatedly recognized the importance of the prosecution's affirmative duty to disclose evidence favorable to a defendant. *Brady v. Maryland*, 373 U.S. 83 (1963) (relying on *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)); *Pyle v. Kansas*, 317 U.S. 213, 215-216 (1942). This ruling is an extension of *Mooney*, where the Court ruled on what nondisclosure by a prosecutor violates due process. *Mooney v. Holohan*, 294 U.S. at 112. The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffer when any accused is treated unfairly. *Brady*, 373 U.S. at 87.

This Court has recognized in cases prosecution withheld: statement in which the co-defendant admitted the actual homicide. *Brady v. Maryland*, 373 U.S. 83; Criminal record. *Agurs v. United States*, 427 U.S. 97 (1974); Contact by the government. *United States v. Bagley*, 473 U.S.

667 (1985); Contemporaneous eyewitness statements, statements made to law enforcement, printout of licence number of cars. *Kyles v. Whitley*, 514 U.S. 419 (1995).

This Court held the suppression of evidence favorable to a defendant was a violation of the Due Process Clause of the Fourteenth Amendment. Specifically, the Court held "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution", *Brady*, 373 U.S. at 87.

The State has an affirmative duty to disclose evidence favorable and material to a defendant's guilt or punishment under the Due Process Clause of the Fourteenth Amendment. *Brady*, 373 U.S. at 87-88. This duty attaches with or without a request for the evidence, *Bagley*, 473 U.S. at 682. If the evidence is so clearly supportive of a claim of innocence that it gives the prosecution notice of a duty to produce. *Agurs*, 427 U.S. at 106.

CONCLUSION

The petition for a writ of certiorari should be granted.

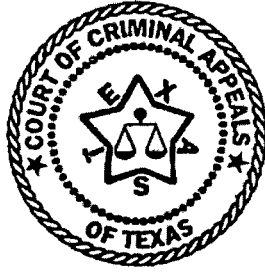
Respectfully submitted,

Albert Randolph

Date: November 21, 2019

APPENDIX

A



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-73,178-08

EX PARTE ALBERT RANDOLPH, Applicant

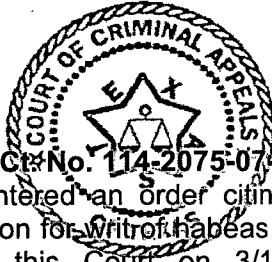
ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 114-2075-07-K IN THE 114TH DISTRICT COURT
FROM SMITH COUNTY

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of sexual assault of a child and sentenced to life imprisonment.

In his present application, Applicant raises one ground. This application, however, presents a more serious question. This Court's records reflect that Applicant has filed six prior applications pertaining to this conviction. It is obvious from the record that Applicant continues to raise issues that have been presented and rejected in previous applications or that should have been presented



4/3/2019

RANDOLPH, ALBERT Tr. Ct. No. **114-2075-07-UU**

WR-73,178-49

This Court has previously entered an order citing you for abuse of the writ of habeas corpus. The application for writ of habeas corpus filed by you in the 114th District Court, received by this Court on 3/11/2019, does not satisfy the requirements for consideration set out in the order described above. Therefore, the Court will take no action on this writ.

Deana Williamson, Clerk

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GATESVILLE, TX 76597