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No.

18-9293

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAY 08 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

EUGENE COOPER-PETITIONER

vs.

STATE OF FLORIDA-RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

FOURTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EUGENE COOPER #079995

OKEECHOBEE CORRECTIONAL INSTITUTION
3420 N.E. 168th STREET
OKEECHOBEE, FLORIDA, 34972

RECEIVED
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether the trial court erred and abused its discretion in denying Mr. Cooper's 3.850 (b) (1) Motion for Postconviction relief based on Newly Discovered Evidence, violating his Federal Constitutional Rights to Due Process.
2. Whether the trial court erred and abused its discretion in denying Mr. Cooper an evidentiary hearing on his Motion for Postconviction relief based on Newly Discovered Evidence, violating his Federal Constitutional Rights to Due Process, where he did not receive a full and fair opportunity to present his claim.
3. Whether the trial court erred and abused its discretion in not appointing Mr. Cooper counsel to assist him in presenting his complex Newly Discovered Evidence claim, violating his Federal Constitutional Rights to Due Process, where he did not receive a full and fair opportunity to present his claim.
4. Whether the Fourth District Court of Appeal erred and abused its discretion in denying Mr. Cooper's complex Newly Discovered Evidence claim without holding an evidentiary hearing, violating his Federal Constitutional Rights to Due Process, where he did not receive a full and fair opportunity to present his claim.
5. Whether the numerous Due Process Violations, individually and/or collectively, irreparably denied Mr. Cooper his right to a full and fair opportunity to present his complex Newly Discovered Evidence claim.

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:

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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 C 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 trial court to review the merits appears at Appendix B 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 _____.
A copy of that decision appears at Appendix _____.

- 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

Fourteenth Amendment.to the Federal Constitution

Fifth Amendment.to the Federal Constitution

Article 1 section 9, Florida Constitution

STATEMENT OF THE CASE

Circuit Court of The Seventeenth Judicial Circuit in and for Broward County, Florida is the Court that entered the judgment and conviction under attack. The judgment of conviction was entered on December 11, 2002. The lengths of his sentences are as follows: Count I: Natural Life, Count II: 30 years concurrent to Count I. Nature of the offenses involved: Count I: Burglary of a Dwelling/w Battery, Count II: Aggravated Battery. Mr. Cooper entered a plea of not guilty. Mr. Cooper had a jury trial, and did not testify at trial. He appealed his judgment of conviction and sentence to The Fourth District Court of Appeal, and it was Per Curiam Affirmed, see case number 4D03-413. Other than a direct appeal from the judgment of conviction and sentence, Mr. Cooper has previously filed the following motions in regards to the judgment of conviction and sentence under attack.

3.850(b)(1) Motion for Post Conviction in the Seventeenth Judicial Circuit in and for Broward County, case number (02-11343CF10A. It was filed on January 3, 2005. Let the record reflect the grounds raised. He did not receive a hearing. It was denied on June 7, 2006. He also filed a petition for Writ of Habeas Corpus, in Broward County case number, (02-11343CF10A let the record reflect date of filing and the grounds raised. He did not receive a hearing where evidence was given on his petition. Let the record reflect the date it was denied.

Mr. Cooper played football two (2) years semi-pro football, and three (3) years of high school football, and four (4) years of pre-high school football (Middle School & Pop Warner). Throughout 9 years of playing football, Mr. Cooper put in thousands of hours of practice and game time and suffered

numerous MTBI and concussions. At time of the incident and to the current day, Mr. Cooper has the symptoms of C.T.E., which include loss of memory, headaches, difficulty controlling behavior, outbursts, aggression and depression. Mr. Cooper's injuries were both documented and undocumented while playing as an offensive lineman, defensive linemen, and on special teams.

On 5/30/2002, Mr. Cooper illegally gained entry to Gloria Ann Allen's apartment by forcing open and climbing through the north bedroom window of her apartment. Once inside, Mr. Cooper took the victim's television set, walked outside and was in the process of putting the stolen television into his car when the victim, Allen, discovered him.

Allen confronted Mr. Cooper in an attempt to get her television back. A physical confrontation ensued. During the course of the struggle, Mr. Cooper bit the victim on her arm. This injury required the victim to seek medical attention at Broward General Medical Center and left a permanent half dollar size scar on her arm.

It is clear from the testimony (Depositions) of Ms. Gloria Allen (victim) that Mr. Cooper was not acting in a normal mental state, and that something was obviously wrong with the defendant.

Mr. Cooper has an extensive history of violent crimes, which shows that he has exhibited the symptoms of C.T.E. prior to this incident, and to this present day.

Mr. Cooper also has a history of long-term cocaine and alcohol abuse, and based on Mr. Cooper's irrational reasoning, and actions during this crime, his repeated head trauma, and extensive violent criminal history, he should have had a mental evaluation conducted on him to explore the possibility of an insanity defense. Mr. Cooper may have been operating under a cocaine-induced psychosis at the time of the crime. There is

reason to believe that Mr. Cooper could have been incompetent to stand trial or that he may have been insane at the time of the crime as required under *Fla. R. Crim. P.* 3.216.

In addition to the facts stated above, Mr. Cooper has been engaged in numerous violent confrontations (fights) that caused severe head injuries, where Mr. Cooper had to be hospitalized. These are the types of injuries that cause C.T.E.

On or about July 17, 2017 Mr. Cooper became aware of the Journal of the American Medical Association report ("JAMA report") regarding CTE authored by Dr. Ann McKee ("Dr. McKee") while watching television at Okeechobee Correctional Institution. The newscast reported that 99% of NFL football players studied post mortem were found to have CTE. This new JAMA report was also expanded to include semi-pro, college and high school football players. Mr. Cooper obtained the address of the American Medical Association and requested a copy of the report. Mr. Cooper also wrote prison classification, and family, requesting information regarding the JAMA report and information on CTE.

On or about September 14, 2017 Mr. Cooper obtained a copy of the Journal of American Medical Association¹ summary article of the report listing Key Points of the report's findings and statistical results. (JAMA CTE Summary/Article). The article concluded that the CTE severity was based on athletic history and clinical presentation, including behavior, mood, and cognitive symptoms and dementia. *Id.* at 2. The results of the summary shows the JAMA report found 21% of high school football players, 64% of semi-pro football players, 91% of college

football players, and 99% of National Football League players examined were found to have CTE.

On September 25, 2017 Mr. Cooper obtained the September 22, 2017 USA Today newspaper article titled "Hernandez CTE result is a huge problem for NFL." The article listed the symptoms of Stage III CTE "such as memory loss, executive dysfunction, aggression, and explosive behavior, loss of concentration, mood swings, depression, apathy and cognitive impairment. Many of these symptoms Mr. Cooper exhibited prior to the subject incident and continued to exhibit such symptoms.

On or about September 27, 2017 Mr. Cooper received by mail from his sister The Palm Beach Post July 26, 2017 article titled "CTE STUDY IS TROUBLING" which list symptoms of CTE Mr. Cooper exhibited prior to the date of the incident through today. The "[s]ymptoms include loss of memory, difficulty controlling behavior, impaired, aggression and depression." Mr. Cooper experienced the aforementioned CTE symptoms prior to, during, and after the offense occurred.

Sometime in 2017 while in prison Mr. Cooper became aware of chronic Traumatic encephalopathy ("CTE") when he saw a report about actor Will Smith appearing in the movie "Concussion" playing the part of Dr. Bennett Omalu ("Dr. Omalu"). Based on further news reports and articles Mr. Cooper read at the time, CTE caused football players to commit suicide, have speech problems and dementia. Mr. Cooper wrote Dr. Omalu in California requesting information about CTE. Mr. Cooper never received a response back from Dr. Omalu. Mr. Cooper also requested his sister search online for information on CTE and she sent news clippings about *The Spectrum of Disease in Traumatic Encephalopathy* by Dr. McKee and *Clinical Presentation*

of Chronic Traumatic Encephalopathy by Dr. Robert Stern, but could not obtain the actual reports.

At the time of Mr. Cooper's trial in 2002, CTE and its side effects could not have been discovered, as it was an undiscovered or unconfirmed disease, which is now being diagnosed in NFL and World Wrestling Entertainment (WWE) athletes *post mortem* with a "direct tissue examination, which can detect an elevated level of Tau protein in brain tissue." *McCullough v. World Wrestling Entm't, Inc.*, 172 F. Supp. 3d 528 (2d Cir. Conn. 2016). Not until the recent JAMA report where the statistics available the 99% of professional football players suffer from CTE. Further at the time of Mr. Cooper's trial professional testimony in regards to CTE could not withstand either the Daubert or Frye Tests. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786. Furthermore, the JAMA report study began in 2009 years after Mr. Cooper's trial and therefore the scientific information currently available could not have been reasonably discovered. ("The new study published on July 25, 2019 is the continuation of a study that began eight years ago.")

Mr. Cooper has diligently pursued gaining information in regards to CTE upon discovering knowledge of the disease, has written various institutes and neuropsychologist requesting information in regards to CTE since 2017, and has received no response from any of his requests. Therefore, Mr. Cooper has exercised due diligence.

REASON FOR GRANTING THE WRIT

This Honorable Court should grant certiorari and exercise its discretionary jurisdiction for the following compelling reasons:

The decisions of both the trial court and the Fourth District Court of Appeals were erroneous and violated Mr. Cooper's State and Federal rights to Due Process and the Right to Counsel Clauses of the Federal Constitution, where nether the trial court or fourth DCA afforded Mr. Cooper an evidentiary hearing on his CTE claim, or appoint counsel to assist him.

By Mr. Cooper not being granted an evidentiary hearing, he was not given a full and fair opportunity to present his CTE claim violating his right to due process under the State and Federal Constitutions, Further, both the trial court and the Fourth District Court of Appeals fail to appoint Mr. Cooper counsel to assist him due to the complexity of his newly discovered scientific evidence, and his CTE claim, violating the equal protection clause of the Fourteenth Amendment that is disproportionately applied in the State of Florida. U.S. Const. Amend. XIV and the due process clauses of the State and Federal Constitutions.

Based on the argument and authorities herein, Mr. Cooper has shown, the decisions of both lower courts were erroneous,

and are in conflict and violated his State and Federal Constitutional Rights.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Eugene Cooper #079995
Eugene Cooper DC# 079995

Pro se

Date: May 8 2019