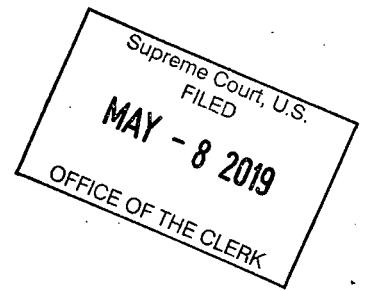


18-9630
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Michael Mancil Brown

— PETITIONER

(Your Name)

VS.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6th Circuit United States Appeals Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Mancil Brown #21850-075

(Your Name)

P.O. Box 9000

(Address)

Forrest City, AR 72336

(City, State, Zip Code)

No Phone Number

(Phone Number)

QUESTION(S) PRESENTED

Was the Petitioner's 6th Amendment Rights to effective counsel violated when Petitioner's Attorney refused a mistrial offer by the Court without consulting with the Petitioner after closing arguments during trial? The District Court & the 6th Circuit Appeals Court does not believe this constitutes a violation of the 6th Amendment.

Was the Petitioner's 5th Amendment Rights to due process violated when the court cut-off the Petitioner's Attorney five minutes early during final closing arguments to the jury during trial? The District Court & the 6th Circuit Appeals Court does not believe this constitutes a violation of the 5th Amendment.

Was the Petitioner's 6th Amendment Rights to effective counsel violated when Petitioner's Attorney did not test DNA evidence against any suspect or witness presented by the Government to rule out their involvement? The District Court & the 6th Circuit Appeals Court does not believe this constitutes a violation of the 6th Amendment.

Was the Petitioner's 6th Amendment Rights to effective counsel violated when Petitioner's Attorney did not use allocated expert to debunk the Government's claim that Petitioner had created a program to automate Pastebin postings? The District Court & the 6th Circuit Appeals Court does not believe this constitutes a violation of the 6th Amendment.

Was the Petitioner's 6th Amendment Rights to effective counsel violated when Petitioner's Attorney did not present Evidence to debunk the Government's claim that an encrypted file password only existed on Petitioner's computer? The District Court & the 6th Circuit Appeals Court does not believe this constitutes a violation of the 6th Amendment.

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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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 6, 2018.

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: February 19, 2019, and a copy of the order denying rehearing appears at Appendix C.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

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 offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal 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.

AMENDMENT 6

Rights of the accused.

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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

COMES NOW, Petitioner, Michael Mancil Brown pro se, requesting this Honorable Court to accept and review his Petition for Writ of Certiorari on his Habeas Corpus Appeal 2255 and grant him his requested and deserved relief. To prevail on a claim for ineffective assistance of counsel, a petitioner must first show that his counsel's performance fell below an objective standard of reasonableness. Even if a court finds deficient performance of counsel, the petitioner must also establish prejudice, which requires him to demonstrate that, but for the counsel's errors, there is a reasonable probability the result of the proceeding would have been different.

Included in this Petition for Writ of Certiorari, there will be an affidavit from Petitioner's counsel, which notes that the "decision not to pursue such DNA evidence was strategic in nature". Also there will be trial hearing transcripts showing how the District Court is perjuring itself about the mistrial offer. Other transcripts will clearly show how the government and Petitioner's counsel were grossly working together to ensure Petitioner's conviction, which is a conflict of interest and also the very definition of ineffective assistance of counsel.

For the record, on August 8, 2016, Petitioner was sentenced to a total term of imprisonment of forty-eight (48) months to be followed by three (3) years of supervised release. This was based on a total offense level of 21 and a criminal history category of I, Petitioner's guideline range was 37-46 months. The District Court imposed a sentencing enhancement for obstruction of justice. On August 17, 2016, Petitioner timely appealed to the Court of Appeals for the Sixth Circuit. On June 6, 2017, the Court of Appeals issued its mandate which affirmed all the Petitioner's convictions but vacated the sentencing enhancement for obstruction of justice and remanded the case for resentencing. On August 14, 2017, the District Court resentenced Petitioner to the exact same sentence as the one that was handed down on August 8, 2016. A total term of imprisonment of forty-eight (48) months followed by a term of three (3) years of supervised release.

Petitioner filed for appealability to the 6th Circuit Court of Appeals and was denied. Petitioner now seeks this Honorable Court to intervene and correct the prejudice of the lower courts.

Scientist: Eugenia Cheng

"In logic, you can't just take something that's false and make it true and think that there will be no consequences - the consequence is that your logical system won't be consistent anymore."

REASONS FOR GRANTING THE PETITION

1) ATTORNEY'S TIME WAS CUT SHORT AT TRIAL

As clearly show in EXHIBIT A this conversation took place at the end of closing arguments. This conversation has been removed from the transcript, but remains in the court audio EXHIBIT B. EXHIBIT A is a printed section of the court audio.

Mr. Frensley: "Judge, I don't know if I was doing so good or bad but I feel like you cut me off about 5 minutes earlier than you said I was gonna get".

The Court: "Uh, I don't believe so".

Mr. Frensley: "Ok, I was timing, I was timing myself and I, I looked at my clock and had about 5 minutes left".

The Court: "Well".

Mr. Frensley: "But I figured you knew best".

The Court: "Well, wait just a minute. You started according to my records at four-twenty and that would give you. I, I did cut you off 5 minutes early".

Mr. Frensley: "That's alright Judge, less is more".

According to Mr. Frensley's Affidavit EXHIBIT C, this never happened. Section #18 of Jeffrey Frensley's Affidavit - "The undersigned has reviewed the transcript of the closing argument in this case. Neither the transcript nor the counsel's recollection indicates that counsel was cut-off or not permitted to complete his argument. The court imposed time limitations on both sides, however, nothing in the transcript or undersigned's recollection indicate that the time allotted was insufficient to make the arguments to the jury".

2) AFTER CLOSING ARGUMENT, ATTORNEY REJECTED THE DISTRICT COURT'S MISTRIAL OFFER WITHOUT CONSULTING THE OFFER WITH THE PETITIONER

As clearly shown in EXHIBIT A, the District Court made Mr. Frensley a mistrial offer, but before the Petitioner or the government could say anything, Mr. Frensley flat rejected the mistrial offer. Again this conversation has been removed from the transcript, but remains in the audio, started at time index 1:38:27

The Court: "Well, wait just a minute. You started according to my records, at four-twenty and that would give you. I, I did cut you off 5 minutes early" ..

Mr. Frensley: "That's alright Judge, less is more".

The Court: "You want to move for a mistrial? You're not gonna lose".

Mr. Frensley: "No Sir".

The Court: "I apologize for that".

According to Mr. Frensley's Affidavit EXHIBIT C, this never happened either. Continuing in Section #18 of Mr. Frensley's affidavit: "Furthermore, counsel is unaware of and can not identify Mr. Brown's contention that a mistrial was offered relative to closing arguments. In any event, any suggestion of mistrial would be discussed with Mr. Brown and Mr. Brown agreed to any decision regarding whether or not to accept a mistrial".

The court audio EXHIBIT B at time index 1:38:43 will show Mr. Frensley very unprofessional at his job in defending a client, as well as highly ineffective, and there was never any consultation with the Petitioner about this mistrial offer. The question is simple, how could any court not find Mr. Frensley as ineffective assistance of counsel? Not only is Mr. Frensley ineffective in providing effective assistance of counsel, but he has possibly lied in his affidavit, resulting in possible perjury.

3) ATTORNEY DID NOT TEST DNA EVIDENCE AGAINST ANY SUSPECT OR WITNESS PRESENTED BY THE GOVERNMENT TO RULE OUT INVOLVEMENT

In Mr. Frensley's Affidavit, Section #9 and #10 state: "Mr. Brown's first two claims relate to investigation of DNA evidence. Specifically, it appears Mr. Brown contends that counsel was ineffective for not testing DNA evidence against other individuals to rule out his involvement or match a person involved other than himself. Mr. Brown contends that this would show that he had no involvement".

If the Government is going to claim that the Petitioner committed this crime and then sent the evidence to the Democratic and Republican headquarters in Tennessee, yet there is no evidence or proof linking the Petitioner to these activities, how can this proceeding be allowed to continue? Why did the court allow the Government to continue this charade. Why did the court not dismiss all charges against the Petitioner?

Mr. Frensley continues: "Presumably, Mr. Brown is referencing certain DNA evidence that was discovered on the packages delivered to the Democratic and Republican Party headquarters in Williamson County, Tennessee. Two of these packages contained DNA of two unidentified male individuals". The office of the Republican Party headquarters was an all female staff and none of the packages contained the Petitioner's DNA as stated in EXHIBIT E.

4) ATTORNEY DID NOT USE ALLOCATED EXPERT TO DEBUNK THE GOVERNMENT'S CLAIM THAT PETITIONER HAD CREATED A PROGRAM TO AUTOMATE PASTEBIN POSTINGS

The Government claimed that Petitioner created an automated program to create pastebin postings while he was not at his home. The Government showed the Jury a video they made as proof of this claim. The Petitioner's claim is that this was technically impossible; and that the video was manufactured or fabricated evidence and that the Petitioner's computer expert agreed to demonstrate this false claim to the Jury, live in front of them. Mr. Frensley had no interest in calling this

witness on behalf of the Petitioner, his client. The court had allocated the funds for this expert to testify. EXHIBIT D, the transcript will clearly show again, how ineffective Mr. Frensley is by his conflict of interest in the Petitioner's innocence of this crime. (Page 136 of 148 - EXHIBIT D)

Mr. Frensley: "I've spoke with the Court reporter. I'm appointed under the Criminal Justice Act and just wanted to ask Your Honor, if we do get to Agent Stephenson today, if I could have funds authorized for that brief portion of the transcript that is his testimony so that I could share that with my expert".

The Court: "Is he your next witness"?

Mr. Jones: "He'll not be next, Your Honor. There's one more before him. So we may not get to him today".

The Court: "Well, we'll probably recess when you get through with the next one. That way we won't have to cause the Government to spend more money".

Mr. Frensley: "Judge, I was trying to save the Government money by not having my expert here already".

The Court: "I appreciate that".

Mr. Frensley: "I'm always looking for a dollar for the Government, Judge".

The Court: "Me too. Mater of fact, I'm staying in -- on the other side of Gallatin because hotels downtown are so high -- the Government will pay it, but I'm not going to let them pay it. I'm a good fiscal conservative even though I was a Democrat before I got appointed".

Mr. Frensley: "Yes sir, I understand. Thank you, Judge".

The Court: "All right. We're in recess for four or five minutes".

The judge would claim the court was in recess, then Mr. Frensley would say something about the case and the discussion would continue, therefore, the court never reaches recess. This discussion continues until page 137 of the transcript.

5) ATTORNEY DID NOT PRESENT EVIDENCE TO DEBUNK THE GOVERNMENT'S CLAIM THAT ENCRYPTED FILE PASSWORD ONLY EXISTED ON PETITIONER'S COMPUTER

The Government claimed that the encrypted file password existed nowhere else in the world except on the Petitioner's computer. The Petitioner wanted to show the court that the password existed online where it was found and was accessible to anyone in the world via the Internet. Proof was in the location to find it online with a date stamp several years previous to 2012. This debunks the government's claim that the Petitioner created the password.

MISTRIALS

According to *Evans v. Michigan*, 568 U.S. 313 (2013) [L.Ed. Digest: Criminal Law . 26.29 Mistrial]; The United States Supreme Court's cases have defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. Thus an acquittal includes a ruling by a court that the evidence is insufficient to convict, a factual finding that necessarily establishes a criminal defendant's lack of criminal culpability, and any other ruling which relates to the ultimate question of guilt or innocence. These sorts of substantive rulings stand apart from procedural

rulings that may also terminate a case mistrial, which the Court generally refers to as dismissals or mistrials. Procedural dismissals include rulings on questions that are unrelated to factual guilt or innocence, but which serve other purposes, including a legal judgment that a defendant although criminally culpable, may not be punished because of some problem like an error with indictment.

Buckley v. Fitzsimmons, 509 U.S. 259 (1993) [CIVIL RIGHTS . 32 Fabricating Evidence During Investigation] 1a, 1b, 1c, 1d, 1e, 1f. Prosecutors are not entitled to absolute immunity from an accused's claim seeking relief for the prosecutor's alleged fabricating of evidence, during the preliminary criminal investigation, of evidence indicating that a boot print was from the accused's boot. This is the same conduct that the government had displayed in the Petitioner's case, when the government manufactured a video as evidence to prove that the Petitioner created a program to create pastebin postings, while he was not at home, or on a computer anywhere at the time of postings. In Buckley, the United States Supreme Court granted the accused's petition for certiorari, vacated the judgment, and remanded the case for further proceedings in light of an intervening Supreme Court decision: Estelle v. Wasko, 502 U.S. 801 (1991), which is what the Petitioner is seeking from this Honorable Court.

RIGHT TO COUNSEL

[CRIMINAL LAW - COUNSEL DUTIES . 46.4]; In representing a criminal defendant, the counsel owes the client a duty to loyalty, a duty to avoid conflict of interest, a duty to advocate the defendant's cause, a duty to consult with the defendant on important decisions, with skill and knowledge as will render the trial a reliable adversarial testing process. Mr. Frensley failed in all of the above definitions as both the trial court audio and transcripts will prove beyond a reasonable doubt.

Strickland v. Washington, 466 U.S. 668 (1984) [INEFFECTIVE ASSISTANCE] - The defendant is required to show actual prejudice; a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceedings would have been different or whether prejudice is presumed. As the Petitioner, now provides to this Honorable Court, the trial audio and transcripts, as quoted in Arguments 1 & 2, how the transcript has been redacted and does not contain everything that happened after the closing arguments. It also shows that but for Counsel Frensley's ineffective assistance, the Petitioner would have had a mistrial and not been convicted of a crime he did not commit.

As Petitioner stated in his Petition for Certificate of Appealability, these are serious issues the District Court and now the 6th Circuit Appeals Court have whimsically dismissed through boilerplate deliberate indifference. These issues deserve to be reviewed and adjudicated in a proper manner by this Honorable Court.

CONCLUSION

The Petitioner's meritorious showing of the many ways his counsel, Mr. Frensley, was prejudiced and grossly ineffective as counsel, especially during the closing arguments phase of the trial, as well as the exhibits contained that support the claims presented to the lower courts.

The Petitioner's attorney, Mr. Frensley, failed to provided effective assistance when he failed or refused to move to have the case dismissed for the lack of subject matter or accept the mistrial offer from the District Court, as the exhibits clearly proves happened after closing arguments.

The Petitioner prays this Honorable Court will adjudicate the wrongs that have been committed against him and his family. The Petitioner requests and prays this Honorable Court will overturn the conviction, vacate the sentence, and remand the case to be dismissed with prejudice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Brown

Date: May 17, 2019