

No. 19-5189

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

~~17-20249~~
IN THE

SUPREME COURT OF THE UNITED STATES

17-20249

Michael Tyler — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

united states of appeals for fifth circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Tyler
(Your Name)

11697 Fm 980
(Address)

Huntsville, TX 77343
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Issue ONE:

Whether the U.S. Supreme Court should Grant Certiorari to resolve the Circuit Conflict, whether Schlup Gateway Inquiry require newly Presented evidence or newly discovered evidence call for an exercise of this Court Supervisory Power? If so, Can a Innocence Person Be Procedurally Barred from his Liberty?

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:

Michael Tyler : Petitioner

Robert Morrow : Trial Counsel for Petitioner

Joseph Peter Corcoran : attorney for appellee

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OTHER

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 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☒ is unpublished.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 United States district court 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☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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☐ is unpublished.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 _____ 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☐ is unpublished.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 April 23, 2019.

☒ 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

Schlup v. Delo 115 S.Ct 851 Actual Innocence
Gateway.

Antiterrorism and effective Death Penalty act of
1996

Actual Innocence, Miscarriage of Justice
exception

STATEMENT OF THE CASE

A Jury found Tyler guilty of Capital Murder and on May 26, 2004 imposed a life sentence. The fourteenth court of appeals of Texas affirmed Tyler's conviction on June 21, 2005. The Texas Court of Criminal Appeals refused Tyler's Petition for discretionary review on July 30, 2006. Tyler filed an application for state habeas relief on July 30, 2012 which the Texas Court of Criminal Appeals denied without a written order on August 21, 2013. Tyler filed a second application for state habeas corpus relief on August 16, 2015 which was dismissed as a successive application on November 4, 2015.

On August 2, 2016 Pursuant to 28 U.S.C. 2254 Tyler filed a Petition for writ of habeas corpus with the United States District Court of the Southern District of Texas. Contending that his conviction is void because he is actually innocent and counsel rendered ineffective assistance.

Tyler offered the affidavits of three alibi witnesses, Lashonda Tyler, Tiffany Morgan and Reginald Bean who did not testify at trial stating they were with Petitioner at home where murder occurred. He also offered the report of an expert witness on eye-witness identification. Dr. Fisher Report and Testimony was not presented at this trial.

Tyler also offered the state finding of facts where the state admitted that officer Larue did not testify he saw when and how Petitioner vehicle was damaged. The Jury would have been able

to compare the testimony of the officer to that testimony presented by Rideaux.

The federal district court found that Tyler was aware of the alibi witnesses and the expert witness before trial. The court further found that Tyler has not shown that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence, because the District Court refused to accept Tyler new evidence because he was aware of it before trial.

On March 29, 2017, the federal district court dismissed Tyler challenges as time-barred and would not issue a certificate of appealability. The final judgment was April 12, 2017. Notice of appeal was filed April 10, 2017.

On December 22, 2017, the Fifth Circuit granted a Certificate of appealability limited to the question[©] whether the alibi witnesses 2014 affidavits, Dr. Fisher 2003 report and state finding of facts [§]20 qualified as new reliable evidence that was not presented at trial.

On April 23, 2019, the U.S. Courts of Appeals for the Fifth Circuit affirmed the District Court judgment as Time-Barred.

REASONS FOR GRANTING THE PETITION

Issue one stated:

The United States Court of Appeals for the Fifth Circuit has entered a decision in conflict with the decision of another United States Court of Appeal on the same important matter, which concerns the "new" part of evidence in the actual Innocent Gateway to Federal habeas review applied in Schlup v. Delo 513 U.S. 298.

In Wright v. Quarterman 470 F.3d 581 (6th Cir.), the Fifth Circuit explained that there is a circuit split as to whether newly discovered or merely newly presented evidence is required by Schlup. (Comparing Osborne v. Purkett 411 F.3d 911 (6th Cir.) evidence is only new if it was not available at trial and could not have been discovered earlier through the exercise of due diligence). Amrine v. Bowerson 238 F.3d 1023 (8th Cir.) requiring new evidence that was not available at the time of trial.

However, nothing in Schlup indicates that there is such a strict limitation on the sort of evidence that may be considered in the probability determination. Gomez v. Jannet 350 F.3d 1073 (7th Cir.) all Schlup requires is that the evidence is reliable and that it was not presented at trial. Griffin v. Johnson 350 F.3d 956 (9th Cir.) requiring newly presented not newly discovered.

In regard to the circuit split it is of great importance in habeas corpus jurisprudence to emphasize, Schlup opinion deals with the "fairness of trial". The rare case where if the jury heard all the conflicting evidence.

The majority opinion in Schlup recognized the critical distinction with respect to Herrera's substantive claim and Schlup's procedural claim from the offset of the case and the circuit court should not consider the

Absence of a newly discovered requirement in Schlup a mere oversight. Gomez v. Jaime 350 Fed 673 (Cir.) -

In Herrera, the Petitioner Claim was evaluated on the assumption that the trial that resulted in his conviction was error-free. However, Schlup Claim of Innocence is not based solely on his Innocence but rather on his contention that ineffectiveness of his Counsel deprived the Jury of Critical evidence that would have establish his Innocence.

In face of his miscarriage of Justice dilemma the Court adopted the standard of Murray v. Carrier 477 U.S. 478, which require a habeas Petitioner to show that a Constitutional violation has probably result in his conviction. Applying this standard, The Court believed Justice friendly description of the inquiry is appropriate: the habeas court must make its determination concerning the petitioner innocence in light of all the evidence including that to have been illegally admitted and evidence claimed to have been "wrongfully excluded" or have become available only after trial (38 U. Chi. Rev at 160.)

Furthermore, Justice Stevens opinion suggest that a habeas Petitioner may pass through the Schlup gateway without newly discovered evidence, if other reliable evidence is offered that was not presented at trial (e.g. id 327)

newly discovered and wrongfully excluded are not equivalent. the phrase wrongfully excluded is connected to the ineffectiveness of counsel at trial, for failure to produce exculpatory evidence - wrongfully.

Therefore, in light of Justice Stevens and Justice friendly opinion the Petitioner argue the Court should uphold the Seventh and Ninth Circuit ruling, requiring newly presented evidence that was wrongfully excluded.

As it was in Schlup, the leading case on the actual innocence doctrine. The evidence Schlup claimed proved his innocence was not newly discovered and was within reasonable investigation. However the Court held three items of evidence particularly relevant: the affidavits of Black inmates attesting to the innocence of a white inmate in a racially motivated killing, the Affidavit of Green describing the prompt call for assistance and the affidavit of Lieutenant Faherty describing Schlup unhurried walk to the dining room. The precedent in Schlup allowed him to produce newly presented evidence, in the persuasive showing to avoid a fundamental miscarriage of justice.

The same important matter is identical to the instant case. The Petitioner has claimed he is actually innocent of the crime and the constitutional violation of ineffective assistance of counsel lead to the conviction. The Petitioner produce the new reliable evidence that was not presented at trial. The three Affidavits from alibi witnesses the report from an eye-witness expert and the State finding of facts #20 which he argue deprived the juror of critical evidence that would have proved his innocence.

Therefore, it would be unseemly to refuse Petitioner the exculpatory evidence needed to persuade the district court that, in light of the new evidence, a constitutional violation has resorted in the conviction. A newly discovered rule requiring new evidence be unknown to the defense at the time of trial would operate as a roadblock to the actual innocence.

Gateway. If, procedurally defaulted ineffective assistance of counsel claim may be heard upon a showing of actual innocence. then it would create a miscarriage of justice to block review of exculpatory evidence that could amount to counsel constitutional defective representation. Hawk v. Strickman 625 F3d 88 (3rd Cir).

The burden of proving actual innocence in gateway cases is sufficiently stringent and would be inappropriate and unnecessary for the circuit court to develop a threshold requirement that was not sanctioned by the Supreme Court. Gomez v. Jaime 350 F3d 673 (7th Cir) In the years following Schlup, the court have not expound further on what is "new evidence" "not presented at trial" which have allowed some circuit to interpret "not presented at trial" in connection to the Antiterrorism and effective Death Penalty act. 28 U.S.C. § 2254(d)(1)(A). Requiring newly discovered evidence. Wright v. Quarterman 470 F3d 581 (5th Cir). While other circuit have connected it to the ineffective assistance of counsel at trial, for failure to produce exculpatory evidence Gomez v. Jaime 350 F3d 673 (7th Cir).

It is clear, the eight and sixth circuit newly discovered rule has conflicted with the seventh and ninth circuit newly presented rule. also it appears from the precedent of Schlup, the newly discovered rule conflict with relevant decision of this court on the same important matter.

Ultimately, Petitioner urges the court to Grant certiorari on the compelling reason of national importance. The circuit conflict has created a "Slave State v. freestate" division amongst the United States when the sixth and eight circuit erroneously ruled,

Schlup opinion required newly discovered, it created a consistent flow of fundamental miscarriage of justice. The newly discovered rule would propagate that an appointed counsel can sabotage a defendant entire trial by withholding exculpatory evidence. Thus depriving a Petitioner of his Liberty because he has know protection from the Constitution.

In the history of this country the only person that could be place in bondage without a fair trial before a jury of his peers, was "a slave" as of 1863 this country abolish slavery affording all citizens the protection of the U.S. Constitution. The national importance of this matter is to ensure the eight and sixth circuit misapplication of the law do not propagate slavery tactics in the justice system.

This question of federal law has not been, but should be settled by this court. Whether Schlup inquiry, require newly discovered evidence or newly presented evidence?

CONCLUSION

THE Petitioner for a writ of certiorari should be granted.

Respectfully Submitted

Michael Tyler

Date: July 8, 2019