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No. 19 - 5650

In The Supreme Court Of The United States

James Michael Williams,

Petitioner,

v.

Daniel Paramo, Warden, et. al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Corrected Petition For Rehearing

December 27, 2019

James Michael Williams,
Petitioner, Pro se
I. D. No. An9579
480 Alta Road
San Diego, California

92179

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Petition For Rehearing

Petitioner James Michael Williams, respectfully asks this Court to grant rehearing of this Court's October 21, 2019 Order, pursuant to Rule 44 of this Court.

This corrected petition for rehearing calls the Court's attention to the substance of the claims presented, and that the Petitioner is factually innocent of the offenses resulting in conviction. Existing precedent of this Court is controlling, on each Claim presented herein.

The denial of certiorari has affected Petitioner's liberty and substantial rights to the command of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and his Sixth Amendment rights to a fair and impartial trial.

- 1.) The first principle Ground of error having significance is the denial of due process, where the Jury failed to find-true all the essential elements of the offenses charged to Petitioner, and where the Prosecutor failed to establish his burden of proof.
- 2.) The second Ground of error regards the denial of Due Process rights, where material DNA evidence was not disclosed to the Defense having exculpatory and impeachment importance, critical and material to the Petitioner's innocence.
- 3.) The third Ground of error presented regards ineffective assistance of appointed trial counsel at the second Jury trial, where Counsel's representation was -

deficient and prejudicial to Petitioner's defense, denying Petitioner his Sixth Amendment rights to a fair trial, as the record evidence demonstrates Counsel's failure to conduct initial investigations in securing critical and relevant evidence establishing innocence.

The principle ground of error that regards the jury finding not-true the essential elements of the offenses charged, regards the Jury finding not-true the use of a deadly weapon (a knife) and threats of harm with the alleged knife to the alleged and assumed victim Laurel B.

Who in reality was not a victim of assault, rather an assumed victim , who robbed the Petitioner of a substantial sum of money, and in the aftermath of the robbery lodged a false complaint of being assaulted.

The record evidence, that includes testimony, supports the Jurys failure to find the essential elements of the offenses, the Prosecutor's failure to meet his burden of proof required by the Due Process Clause of the Fourteenth Amendment, and of the assumed victim committing a robbery.

A miscarriage od Justice has occurred in this case, where the Petitioner is innocent of the offenses. The lower courts to date, have not reviewed the factual circumstances, or allowed Petitioner the opportunity to argue the facts, substance and merits of this Claim in particular. The Courts have not adhered to this Court's precedent holdings that control the demand of the due process clause. The denial of relief to Petitioner has been contrary to the command of due process ,

as announced and reinforced by this Court's holding in ,
In re Winship , 397 U. S. 358 (1970).

In Jackson v. Virginia , 443 U. S. 307 (1979) , Justice Stewart opens the Court's Opinion, citing the authority of Winship , supra, being settled law and controlling precedent.

The question being raised by Petitioner with respect to the basic elements of the offenses charged, goes to the basic-nature of the Constitutional right that is recognized in , In re Winship , supra. Where in this case there exist (no) evidence of a critical element of the offenses charged, and where these elements being fundamental were not proven, renders Petitioner's convictions constitutionally infirm.

See: Vachon v. New Hampshire , 414 U. S. 478.

As Justice Stewart , clearly announces on behalf of the Court , " The right established in Winship , however, clearly stands on a different footing ... beyond a reasonable doubt of every element of the offenses charged.

The lower Courts decisions have been in direct conflict with U. S. Supreme Court precedent , that is controlling as to the law and fact , and the lower Courts resolution to the question of pure law , rest upon an objectively unreasonable denial of legal principles established by this Court's precedents.

The lower Courts have not adhered to this Court's holdings in numerous cases, to name a few , Sullivan v. Louisiana , 508 U. S. 275 ; United States v. O'Brien , 560 U. S. 218 (2010) ; Clark v. Arizona , 548 U. S. 735 (2006);

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Apprendi v. New Jersey, 530 U. S. 466 (2000), and as a result the lower courts in this case have 'ignored this Court's precedents and the real practice of decisional law.

The Due Process Clause of the Constitution's Fourteenth Amendment gives this Petitioner the right to demand that a Jury find him guilty of ' all the elements of the crime with which he has been charged. The record evidence demonstrates the Jury's failure to do so, and the Prosecutor's failure to meet his burden of proof beyond a reasonable doubt.

Therefore, Petitioner asks this Court to reconsider the merit of this Claim, in particular. Petitioner is innocent of these offenses, and the principle elements alleged being responsible for these offenses was not proven as a matter of fact and law. Petitioner's conviction is Constitutionally infirm.

The second principle Ground of error, regards multiple items of material evidence, DNA evidence withheld from the Defense having exculpatory and impeachment importance to the defense, with the sole key witness of the prosecution, Laurel B., the alleged/assumed victim.

The lower Courts have all neglected their duty to adhere to precedent holding from this Court that controls disclosure of material evidence to the defense. In violation of Petitioner's due process rights, and Sixth Amendment rights to a fair and impartial trial. Disregarding this Court's precedents in Brady v. Maryland, 373 U. S. 83 (1963) ; this Court's holding in United States v. Bagley, 473 U. S. 667 (1985) ;

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Kyles v. Whitley, 514 U. S. 419 ; and in this Court's most recent reinforcement of Constitutional disclosure requirements to the Defense of material evidence, in Wearry v. Cain, 136 S. Ct. 1002 (2016).

The three items of material DNA evidence withheld from the Defense, would have enabled a proper cross examination of the key-witness, and demonstrate to the Jury the false allegations underlying the complaint and charges. Further, demonstrating to the Jurors Petitioner's innocence, and the false testimony given to a false Complaint lodged.

The manipulation of the evidence by the prosecution through the non disclosure was by specific design. The relevant DNA swabs/evidence was collected and claimed to not be tested, when each item of DNA evidence was relevant to a specific Count charged to Petitioner. Its absence was prejudicial to the defense denying due process rights, and a fair trial.

The Jurors were deprived of learning the truth, had this DNA evidence been disclosed to the Defense.

The third Claim, Ground of error regards appointed trial counsel in the second jury trial.

Who was intentionally removed from representation in the first jury trial, through private Counsel being retained.

However, the appointed Counsel, was initially assigned to this case, and he outright refused to conduct initial investigations, securing critical evidence and witnesses.

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Appointed Counsel being aware of the absence of multiple items of material DNA evidence, and refused to follow-up on the demand for full disclosure of this evidence, 'despite a timely Motion for all Discovery filed with the District Attorney's Office. This does not 'include (all of) Counsel's outright refusals and failures.

Appointed Counsel's representation fell below the required standard clearly expressed by this Court in , Strickland v. Washington, 466 U. S. 694(1984), and the standards set forth by this Court in , Wiggins v. Smith, 539 U. S. 510 (2003).

Petitioner would further state to this Court that he has met this Court's mandate and expectation announced in Miller-El v. Cockrell, warranting the issuance of the Certificate of Appealability, by demonstrating a substantial showing of multiple denials of his Constitutional rights, contrary to the Ninth Circuit Panels silent contention.

Therefore, in light of the existing record, Petitioner would reiterate and incorporate by reference the factual allegations and argument set forth in the Petition for a Writ of Certiorari, and all supporting documents therein in support of Petitioner request to this Court for rehearing.

CONCLUSION

This Honorable Court should reconsider its denial of certiorari in this case.

December 27, 2019

6.

Respectfully submitted,

James Michael Williams
James Michael Williams

Petitioner Pro se

December 27, 2019

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Certificate Of Counsel/Petitioner
(Rule 44)

Acting as Counsel in Pro se, Petitioner James Michael Williams, hereby certifies that this Petition for Rehearing from the denial of certiorari is presented in good faith and not for delay, and that it is restricted to the Grounds addressed under controlling precedent of this Court, that have substantial and controlling effect under the United States Constitution, and the Authority vested in this Court.

December 27, 2019

James Michael Williams

James Michael Williams
Petitioner Pro se
I.D. No. AN9579
480 Alta Road
San Diego, California
92179

December 27, 2019

VERIFICATION

State of California
County of:

(C.C.P. §445 & 2015.5; 28 U.S.C. §1746)

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James Michael Williams declare under penalty of perjury that I am the Declarant/Prisoner in the above entitled action; I have read the foregoing documents and know the contents thereof and the same is true of my own knowledge., except as to matters stated therein upon information, and belief, and as to those matters, I believe them to be true.

Executed this 27th day of December, in the year of 2019 at R.J. Donovan Correctional Facility (RJD) 480 Alta Road, San Diego, CA 92179.

Signature: James Michael Williams
(Declarant/Prisoner)

PROOF OF SERVICE BY MAIL

(C.C.P. §1013 (a) & 2015.5; 28. U.S.C. §1746)

James Michael Williams am a resident of R.J. Donovan Correctional Facility (RJDCF), in the county of San Diego, state of California. I am over the age of eighteen (18) years of age and am / a party of the above entitled action. My state prison address is 480 Alta Road, San Diego, CA 92179.

On December 27, 2019, I served the foregoing: Corrected Petition For Rehearing with attached Certificate of Counsel/Petitioner (Rule 44),

(Set forth exact title of document served)

On the party(s) herein by placing a true copy(s) thereof, enclosed in a sealed envelope(s), with postage thereon fully paid, in the United States mail, in a deposit box so provided at RJDCF.

Supreme Court Of The United States
Mr. Scott S. Harris, Clerk
Office Of The Clerk
C/O Mr. Jacob Levitan
Washington, D.C. 20543 - 0001

There is a delivery service by United States mail at the place so addressed, and there is regular communication by mail between the place of mailing and the place so addressed. I declare under penalty of perjury that the foregoing is true and correct.

Date: December 27, 2019 James M. Williams # AN9579
(Declarant/Prisoner// in Pro Se)