19-5667

Nos.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

From an action in United States Court of Appeals
for the First Circuit

Nos. 18-1495

United States District Court Nos.

17-12501-LTS

John J. Blodgett Pro se

v

Erin Gaffney, respondent
appellee

ON A PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

PETITION FOR CERTIORARI

John J. Blodgett Pro se
W36184
OCCC
1 Administration Rd.
Bridgewater, MA 02324

QUESTION PRESENTED:

Did the First Circuit err by refusing to entertain Blodgett's two meritorious issues, and shut out the possibility of certificate of appealability; WHERE his actual innocence claim has never been fairly considered (Brady issue), and his co-defendant's statements used against him without his co-defendant have counsel (co-defendant suicided before trial), also creating Confrontation Clause errors. The COA should issue.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page	Item
15,16	United States v Bagley 473 US 667 (1985)
16	United States Court of Appeals District of Columbia v Daaiyah Pasha, Iman Pasha, Charles Daum 797 F3d 1122 (2015)
18	United States v Edmunson 922 F Supp 505 (10th Cir) (US Dist Ct)
18	United States v Macino 486 F2d 750 (7th Cir 1973)
16	United States v Oruche 484 F3d 590 (D.C. Cir 2007)
16	Wearry v Cain 194 LEd 2d 78 (2016)

OPINIONS BELOW:

United States District Court Judge Leo T. Sorokin denied the instant habeas corpus petition May 1, 2018 mainly the reason also for not considering his actual innocence claim being that Blodgett was 20 years past the AEDPA one year statute of limitations. Judge Sorokin with the same stroke of the pen denied certificate of appealability. This despite Blodgett having pleaded that he came to prison (over) 40 years ago on this charge. When he first came in he was unable to read and write at an adult level. This has changed over the years, but he has never been able to grasp legal concepts. He is not mentally retarded, however, it has evaded his grasp and he has pleaded over the years by hiring jailhouse lawyers to draft pleadings for him. He hired them when available and when he could afford it, but none of them raised the more meritorious issues herein. Judge Sorokin refused to acknowledge the exception to AEDPA statute of limitations being actual innocence by again claiming he's too late, (Addendum 1-9). It should be pointed out that many professional people also cannot grasp law. Its a difficult sea to swim in. Conversely shoeing a horse is not rocket science, but very few people understand how it is done and would not be capable of doing it even if their life depended upon it. Blodgett was in his way, diligent by hiring serial fashion jailhouse lawyers.

The instant pleadings were also drafted by a jailhouse lawyer. Blodgett does not comprehend legal concepts.
The United States Court of Appeals decided to turn down Blodgett's motion for certificate of appealability in June 2019. It was a short paraphgraph stating that Blodgett has run out of time and that he expressed no violation of any constitutional right, (addendum 10).

It was not a fair reading of the issues and evidence Blodgett presented.

Blodgett was convicted as joint venturer of a murder and attempted murder. The surviving victim Robert Moses, identified Blodgett as the driver of the car in which he was tortured and his friend was killed. But it came out during trial that Robert Moses had originally identified three pictures of another man as the driver of the car. But the detectives lied about this. Robert Moses lied about this. During a pre trial hearing for Blodgett's co-defendant Robert Shaughnessy, Robert Moses admitted he identified the 3 pictures of a man other than Blodgett as driver (while Blodgett was taking refuge in Texas). Shaughnessy suicided. So while Blodgett was far away, Blodgett's aprtment key was found dangling from the ignition of the burnt stolen car the murder took place in. Blodgett had been drinking and Shaughnessy must have taken the keys off the bar and taken the car. Its likely the prosecution

team, (after matching Blodgett's apartment key) then steered Robert Moses while he was recovering in the hospital to ID Blodgett, and advised him to forget and not mention he had first mentioned another man as the driver of that car.

At trial the detective and victim witness swore they had not identified anyone else as driver, but then they were ambushed by the dead co-defendant's lawyer having a transcript of that hearing where Moses did originally identify three pictures of another man as driver. The judge called a recess and ordered the detectives to produce the pictures which they refused to do, adamantaly stating there never were any other pictures. Ideally when there is a mini conspiracy between the fragile surviving victim and the detective to pretend evidence of prior identifications does not exist, the indictment should be dismissed with prejudice..

Ideally yes.. In reality no. Perhaps in the much touted Massachusetts trial on Nantucket Island of award winning actor Kevin Spacey where a similar stunt was pulled by the prosecution team (by disappearing a cellphone that contained evidence) it will result in the indictment being dismissed with prejudice.. But Blodgett is not an award winning actor from Hollywood and he has far less money for attorneys..

Add to that the fact that Robert Moses had described major items of the driver's face contrary to Blodgett's face- the teeth, the hair. Blodgett has served over 40 years on an honest but mistaken identification by zealots.

PETITION FOR CERTIORARI TO OBTAIN COA AND OTHER RELIEF

JURISDICTION: This Court has jurisdiction to grant COA when the inferior courts up this point have not recognized 6th and 14th Amendment Due Process rights as legitimate grounds for relief. There was a colluded effort herein briefed between the surviving witness and the detectives to conceal/destroy the fact that witness originally picked three pictures of a man other than petitioner as the driver. The conviction was otherwise based fraudulently upon a joint venturer theory prosecution on his dead co-defendant's abated indictment (he died without being tried). Numerous Confrontation rights and right to counsel instances infected the entire trial.

The rulings of the inferior courts have all, up to this point made rulings that "was contrary to, or involved an unreasonable application of clearly established Federal Law as determined by the Supreme Court of the United States." Please consult Brady v Maryland 373 US 83 (1963); United States v Bagley 473 US 667 (1985); Hohn v United States 118 S Ct 1969, 1970 (1998); 28 USC section 2254(d)(1).

STATEMENT OF THE CASE:

Blodgett had been drinking at a bar called Barney Grogans' He drove there in a stolen car he had been driving for weeks. He drove it back and forth to work, and this was a sort of "sport some of his cronies in South Boston engaged in. Blodgett, already drunk didn't notice when his crony Shaughnessy...

swiped his keys along with his aprtment key while talking to him at the bar. Shaughnessy, a driver, and two to this day unidentified assailants who sat in the back seat drove around Boston, and picked up the victims Robert Moses and John Asinari who were hitchhiking back to their college dorm. (They were med students). Shaughnessy began stabbing John Asinari, and mocking him. He shot Asinari and Moses. The two assailants in the back helped with the stabbing by propping up Asinari and holding him from wiggling. The driver also stabbed Moses. At some point the car stopped and the two victims made a break for it. Moses badly wounded hid under some crates in a vacant lot and later was saved. Asinari was beaten by the assailants in the middle of the street and died on the scene.

Robert Moses was in intensive care for a long time. Within 24 hours he was questioned by detectives. Within 48 hours he had selected three photos of a man other than Blodgett as the driver (Tr 4-93 appendix 28) Moses lied about this on the witness stand but when confronted with his testimony he had belived had died with Shaughnessy he owned it, but tried to explain that although he had selected the photos he didn't really mean it (tr 4-97-100 appendix 32-35). Detective Russell Childers participated in the deception and the judge ordered him to produce the missing pictures and he flatly refused. Its not harmless. Moses also misidentified Blodgett'ss hair and teeth, Tr 4-115-119 appendix 36-38).

Despite trial counsel having objected and claimed exception appellate counsel did not pursue this winning issue. Instead he pursued the weaker issue of the D.A. having threatened a cab driver who showed up to testify as to Blodgett's alibi with prison. The cabbie fled the courthouse without testifying.

True Blodgett did flee to Texas where he was eventually arrested by the FBI. The night of the murder he had to crawl through the window of his apartment to go to sleep because Shaughnessy has stolen his keys. Those keys found in the burnt car's ignition is what turned the tide. Its what prompted detectives to convince Moses to abandon his first pick of who was the driver and focus on Blodgett. Blodgett woke early that day to a phone call from someone who told him his hot car he had been driving for weeks had been used in serious crimes. He fled to Texas.

But the framer's of the United States Constitution Article 1 section 9 never could have intended the Writ of Habeas Corpus be denied to Blodgett a drunk who because of a perhaps well intentioned set of lies in a secret collusion to conceal Moses' and Detective Russel Childers' secret has spent over 40 years paying for a murder he wasn't present for.

Adding insult to injury all those statements of his dead co defendant whose indictment had been abated upon his death admitted without cross examination, and without counsel.

The whole sordid tale is reported at Com v John Blodgett 377 Mass 494 (1979).

LEGAL ARGUMENT WITH AUTHORITIES:

Blodgett's direct appeal counsel's lapse by ignoring a totally preserved Brady issue that theoretically should have been enough to overturn and quash the indictment is the cause of Blodgett's predicament. He never grasped legal theory. He trusted whatever jailhouse lawyer came his way and all of them except the last one missed this bonus of an issue that goes to the real heart of the government's case against him. Moses' word. If Moses' word is found to be defective in any major respect the indictment should have been dismissed. But Blodgett is not a major Hollywood actor and he is pro se. For this reason alone Blodgett should be granted COA and appointed counsel to pursue his immediate liberation from the prison.

A criminal defendant has a 5th, 6th and 14th Amendment right to effective counsel on first appeal as a matter of right, Evitts v Lucey 469 US 387, 392 (1985).

True enough Blodgett's other issue of ascribing error to trying defendant as joint venturer when co-defendant died and his indictment had been abated has never been tested, so an attorney would have to be clairvoyant to use that issue. But theres not excuse for failure to use the Brady issue. Counsel was majorly ineffective.

In a trend to excuse the accused for the lapses of his counsel's non adherence to statutes of limitations, this Court held in Christeson v Roper 190 LEd 2d 763, 2015 LEXIS 627 that habeas petitioner was entitled to remand for hearing on equitable tolling because it was the fault of counsel he missed the deadline for filing.

Blodgett has profferred a prima facie case of a small scale conspiracy to conceal the fact that the victim originally selected three photos of some other man as the driver, and the witness lied, and the detective involved lied, (tr.1-23,1-27) (appendix 16,17). It all comes down to Blodgett's apartment key dangling from the ignition of stolen burnt car that was used in a murder. Thats what shaped the prosecution team to lie to make a square peg fit into a round hole. Shouldn't Blodgett's neglected claim of actual innocence be permitted to defeat a rule that has in effect superceded a bedrock Article of the Constitution that punishes those unable to conceptualize legal theory?

Schlup v Delo only requires that the evidence be something the jury was not exposed to, and of course we know why, because the prosecution team destroyed the evidence of their deception, 513 US 298, 327 (1993). Its never past the statute of limitations to let an innocent man go free from a wrongful conviction. Add on the joint venturer prosecution on dead Shaughnessy's already abated indictment.

Actual innocence if proved serves as Blodgett's gateway by which he overcomes the statute of limitations, McQuiggin v Perkins 569 US 383, 386 (2013). The test is stringent. Evidence of innocence so strong the Court cannot have confidence in the trial's outcome, AND that the trial had plenty of non harmless constitutional error which this case has, Id at 401.

Could it be that jurists of reason would at least find it debatable or wrong that habeas corpus was not granted or COA not issued? Slack v McDaniel 529 US 473, 484 (2000). Is not the incarceration of an innocent man for over 40 years an unreasonable application of clearly established federal law?...Tennard v Dretke 542 US 274, 275, 276 (2004). In Banks v Dretke 540 US 668, 703, 704 (2004) this Court granted COA on a Brady claim similar in circumstances to Blodgett's. In Miller-El v Cockrell 537 US 322, 327 this Court granted COA because of a substantial showing of a constitutional right and also in Shellman v Cambra 531 US 1005 (2000).

Detective Russel Childers lied to the jury and said Moses never selected anyone elses picture as the driver of the car, (tr Vol 1 pgs 24-27). Victim Robert Moses also lied until confronted with previous testimony the prosecution team believed was lost (Tr Vol 4 pgs 92-100). Moses mis-idenitified Blodgett's hair and teeth (Tr vol 4 pg 67). The prosecution's destruction of this evidence violates Due Process and is structural error under UNited States v

Bagley 473 US 667 (1985).

Mistaken identification is the primary cause of wrongful convictions Com v Jones 432 Mass 99, 109 (1996); Com v Johnson 420 Mass 458, 465 (1995).

This Court knows better than anyone else that once a mistaken identification has been made it becomes more concrete and set as time goes by. This is why there should be more strict sanctions set for detectives who subvert Due Process by steering witnesses to identify someone and coercing them to conceal what they have done.

> "The suppression by the prosecution of evidence favorable to the accused upon request violates Due Process where the evidence is material either to guilt or punishment; irrespective of the good faith or bad faith of the prosecution..."

Wearry v Cain 194 LEd 2d 78, 83 (2016); Brady v Maryland 373 US 83, 87 (1963); Strickler v Greene 144 LEd 2d 286, 291 (1999)

> "Once a Court finds a Brady violation, a new trial follows as to prescribed remedy, not as a matter of discretion.."

United States Court of Appeals of the District of Columbia

appellant v

Daaiyah Pasha, Iman Pasha, Charles F Daum, appellants

797 F3d 1122 (2015)(Dist of columbia Cir); quoting

United States v Oruche 484 F3d 590, 595 (D.C. Cir 2007)

Structural errors like this underscore the need for Blodgett to be appointed counsel and COA should issue, Arizona v Fulminante 499 US 279, 310 (1991)

Then theres the thorny issue of should a COA issue for the untested appellate issue whether its constitutional to proceed on a joint venturer prosecution where the co-defendant died before trial and his indictment abated. In Blodgett's case Shaughnessy's statements all came in (some of them in transcript in appendix pgs 18-26), and Blodgett's counsel was told he doesn't have standing to object on dead Shaughnessy's behalf, and of course Blodgett could cross examine dead Shaughnessy, not.

From Transcript Vol 2:

> "..the evidence will show driven by this defendant, John Blodgett...containing three other persons... Robert shaughnessy was also indicted on the same charges..the actions of Shaughnessy and Blodgett each one reponsible for each other's acts.."

Tr Vol 6 pgs 86, 87:

> "In other words its our contention that whatever Shaughnessy did is Blodgett's responsibility.. this is what we call joint venture..

But this evidence came soley from the lips of Robert Moses. He only implicated Shaughnessy for John Asinari's murder. Moses did testify that Blodgett stabbed him,(Moses), but his identification of Blodgett in the nighttime terror drive is already shown unreliable. The tiny point made here is that according to Moses Blodgett had no hand in John Asinari's murder.

No Court has ever addressed the conundrum of joint venturer prosecution on a dead co defendant's abated indictment.

In United States v Edmunson 922 F Supp 505,506-509 the 10th Cir District Court held that a co defendant does have standing to object on behalf of absent co defendant. In archaic English Law a relative was allowed to object on behalf of deceased defendant 4J Chitty Crim Law 238 (1816). In Crosby v United States 506 US 255, 262 (1993) this Court held that trial in absentia is prohibited unless defendant is present at the beginning of trial when jeopardy attaches based on rule 43. Blodgett's counsel should not have been forced to be conflicted between Shaughnessy and Blodgett,

> "The right to counsel guaranteed by the constitution contemplates the services of any attorney devoted soley to the interests of his client.."

Penson v Ohio 488 US 75, 86, 87 (1988);

Glasser v United States 315 US 60, 70, 76 (1942)

> "A former co defendant died before the case was eventually brought to trial. While it is true as the govt. argues that the record does not indicate whether the testimony of this witness would have been helpful, or even available to the appellants, we cannot gainsay that it would not have been, Certainly the death of a witness with first hand knowledge of the events at issue creates a strong possibility of prejudice..."

United States v Macino 486 F2d 750, 754 (7th cir 1973)

Would Shaughnessy have testified had he lived? We don't know. But he definitely was unavailable for cross examination. This Court need only examine the complete testimony of Robert Moses' testimony for the Brady violation, perjury, and all the Confrontation issues and right to counsel issues, Counsel being told he does not have standing to object on

dead Shaughnessy's behalf (Tr Vol 4 pg 62). So its all of Volume Four, but Blodgett's life demands it. Yes its an untested theory except in Blodgett's pro se pleadings. But it has truth and merit as a case of first impression, as trial counsel are not expected to be clairvoyant, Com v Nieves 394 Mass 355, 359 (1985); DeJoinville v Commonwealth 381 Mass 246, 248, 251 (1980).

In sum:

Blodgett has served over 40 years when he was not in that car that night. He was a drunk who got his keys stolen by a crony who also stole cars for kicks.

> "Requirement of proof beyond a reasonable doubt is not limited to those facts which if not proved would wholly exonerate the accused. Under our system of criminal justice even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar..."

Jackson v Virginia 443 US 307, 323, 324 (1979)

A COA should issue and Blodgett should be appointed counsel for a granted Writ of Certiorari towards the end of liberating him from prison as soon as possible.

Respectfully,

9/15/19

John Blodgett Pro se
W36184
OCCC
1 Administration Rd.
Bridgewater, MA 02324

Certificate of Compliance:

Although I am not an attorney I believe I complied with the rules in drafting this petition.

Date: 7/17/19 signed: