

IN THE SUPREME COURT OF UNITED STATES

T' Challa Rashaed Washington §  
Applicant

V § Cause no. 19-5860

Lorie Davis, TDCJ, Director §  
Respondent

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, applicant respectfully requests that this Honorable Court Grant Petition for Rehearing. The Court issued an opinion on this cause on 11/12/2019 and since the first petition for rehearing did not comply with rule 44 of this Court, the petition was returned to applicant on 12/04/2019 with instructions. This petition is now due on December 19, 2019. In support of this Petition for Rehearing, Applicant states as follows:

GROUND FOR REHEARING

The evidence on this case was insufficient to support applicant's conviction for the August 18th, transaction, as alleged in the indictment.

The record found that the State failed to establish beyond a reasonable doubt that Applicant was the man who sold drugs to Samantha Simons a known drug addict. The record shows that on or about August 18th, 2010, in front of an apartment located on Mimosa st. Polk County, Texas, allegedly, Applicant was accused of committing four distinct drug actions on four different days, 8/10/10; 8/18/10; 8/19/2010; and 9/17/2010.

GROUND FOR RELIEF

Applicant contends his conviction was patently obtained in breach of Federal Laws, as determined by the United States Supreme Court, in light of the following Ground, to wit:

1. The evidence was insufficient to establish the August 18th transaction, as alleged in the indictment.

Point of error

It has been long established the Due Process Clause of the 14th Amendment prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt, defined as every fact necessary to constitute the offense charged. Jackson v Virginia, 99 SGT. 2781, 2789 (1979).

In the case at bar, even the Magistrate judge states on his Report " This Court cannot find any testimony elicited regarding an August 18th Transaction" This August 18th transaction was the key offense that was used to convicted Applicant on this case.

Moreover, Ms. Simons purportedly made the drug transaction, on August 18th, 2010, with an individual alleged to be Applicant, and afterward returned to the deputies conducting the controlled buy, with the crack cocaine. (R-III-140, 146-47). When the Deputies looked at the video tape of August 18th, 2010, transaction, they were unable to capture a picture of the person who sold the drugs to Ms. Simons. They cannot identify the dealer's face (R-III-37).

Applicant was tried and convicted for the August 18th, 2010 transaction only. Applicant relies on the Due Process requirements established in Jackson v Virginia, supra, wherein it was held the Due Process Clause requires the State must establish every fact necessary to constitute the offense charged. (id).

LEGAL ARGUMENT AND AUTHORITIES:

The first element of the offense to be pleaded and prove is "The person". The State did not meet its burden in establishing whether or not Applicant is "The Person" conducting an August 18th, 2010 drug

deliver, as distinct from the Aug.19th and Sept.17th transaction. It is the alleged Aug.18th,2010 drug transaction that resulted in the State's introduction of Ex.#30, alleged to cocaine 1.33 grams of cocaine, as distinct from other transaction that contained less than 1.0 grams.(R-III-11, 111,145,167). There is no evidence that depict the drug dealer's face in the video footage.

Applicant cites GUSMAN V LENSING,934 F2d 80,84 (5th Cir 1991) (mere presence does not, alone, establish criminal culpability.) See U.S. v CORDOVA-LARIOS 907 F2d 40,42 (5th Cir 1990)(mere presence in the area where drugs are found is insufficient to support a finding of possession); EVENS 202 SW 3d 158,161;POINDEXTER 153SW 3d at 402.

In the final analysis, as this Honorable Court has put it, criminal substantive Due Process protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. MICHELENS V DROVIO,72 F2d at 506 (Quoting IN RE WINSHIP,397 US at 364,90 SCT.)

A rehearing shall be granted if the Applicant can make a substantial showing of a violation of his Constitutional Rights and Federal Laws as determined by the United States Supreme Court; SLACK V McDANIEL 120 S.CT. 1595 (2000); WILLIAM V TAYLOR 120 S.CT. 1495. Jurist of reason would find the Court's determination on the merits of Applicant's argument concerning the sufficiency of Evidence and Due Process breach of the Aug.18th,2010 drug transaction, debatable or wrong. MILLER-EL v COCKRELL 123 S.CT. 1029(2003). This case at bar, Falls squarely within this category. The only thing that the evidence support in this case is, that Applicant was convicted for been at the wrong place, at the wrong time.

Because Applicant's claim is debatable, and the resulting convict-

ion violates federal laws, as determined by the United States Supreme Court, see Jackson v Virginia, supra; William v Taylor, supra, and Slack v McDaniel; supra, this Honorable Court should find jurist of reason would determine the lower Court's ruling on the merits of Applicant's Insufficient Evidence Claim was wrong, because this claim is debatable or wrong, warranting encouragement to proceed further. Miller - EL, supra.

CONCLUSION

Applicant respectfully requests that this Honorable Court reconsider its decision to deny Applicant's Application for a writ of certiorary, on cause no. 1905860 and grant a rehearing on this claim.

PRAYER

Applicant prays this Court would find Due Process and the interest of justice would be best served Applicant by this Court granting this his Motion for Rehearing as argued above. Applicant prays for reversal of his Constitutionally infirmed conviction, Alternatively, Applicant prays for whatever other, further or different relief this Court deem is just and proper, in the interest of justice.

Certificates of acknowledgement;

I, T'Challa Rashaed Washington, certify that the ground is limited to intervening circumstances of substantial or controlling effect or to other substantial ground not previously presented

/s/ Mr. T'Challa Washington  
Pro se

Certificate of good faith;

I, T'Challa Rashaed Washington, pro se herein certify that the request of this Motion for Rehearing is not to harass the TDCJ Director or to delay this proceeding. I am doing this request in

/s/ Mr. T'Challa Washington

good faith.

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing to the United States Supreme Court, office of the Clerk Washington, DC 20543-0001, on this day 12 of December 2019. The above mentioned documents were placed in the Darrington Unit mail box to be sent to the United States Supreme Court at the above mentioned address.

Respectfully submitted

Executed on 12 / 17 / 2019

/s/ Mr. T'Challa Washington  
Mr: T'Challa Rashaed Washington-Pro se  
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77583

Applicant also cites HAYNE V KENNER 92 S. CT. 594 (1992) and HUGH V ROWE 101 S. CT. 173 (1980) (It is well settled that allegation of Pro Se complainant, however in art fully "Pleaded" are to be held to less stringent standard than pleading drafted by lawyer.