

No. 19-5997 ORIGINAL

Supreme Court, U.S.  
FILED

JUL 02 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Williams, Jr. — PETITIONER

(Your Name)

vs.

Commonwealth of Massachusetts — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Judicial Court of Massachusetts

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

PETITION FOR WRIT OF CERTIORARI

Robert Williams, Jr.

(Your Name)

MCI Shirley, Medium  
P.O. Box 1218

(Address)

Shirley, MA 01464-1218

(City, State, Zip Code)

None

(Phone Number)

**QUESTION(S) PRESENTED**

Whether, in order to prove actual innocence, the cause of death, in a capitol murder case, had an affect on the judgment of the jury, and where Defendant Robert Williams, Jr. has now obtained newly discovered evidence in the form of an x-ray of the skull of the victim, that has been digitized and put on a thumb drive, and establishes the victim did not meet his untimely demise as the result of a stab wound to the skull and brain, as claimed by the state and allegedly corroborated by the death certificate, which was also false. The aforementioned x-ray has been received and reviewed by United States District Court Judge, Allison D. Burroughs, who has confirmed that the victim did not suffer a stab wound to the skull and brain, see Attachment C, page 4, footnote 2.

### 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:

Middlesex County District Attorney Marian Ryan

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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 \_\_\_\_\_ 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 is unpublished.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 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits 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.

The opinion of the Middlesex County Superior Court court 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.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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 \_\_\_B\_\_\_\_\_.  
\_\_\_\_\_

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_D\_\_\_\_\_.  
\_\_\_\_\_

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**

Fifth and Fourteenth Amendments to the United States  
Constitution, denial of Due Process, and loss of liberty.

## STATEMENT OF THE CASE

On January 13, 1982, a Middlesex County jury convicted the petitioner, Robert Williams, Jr. of first degree murder, armed robbery while masked, and assault and battery with a dangerous weapon. The convictions arose out of an armed robbery of a Lowell, Massachusetts liquor store by Williams and a co-defendant, which is was claimed that Williams stabbed the clerk, Donald Roberts multiple times in the head and upper body. Williams was sentenced to life imprisonment on the murder conviction and life imprisonment on the armed robbery while masked conviction, to be served concurrently. Williams has been incarcerated since that time.

The Supreme Judicial Court of Massachusetts heard Williams' direct appeal, consolidated with his first motion for a new trial, in 1986, and denied relief to Williams. See Commonwealth v. Williams, 399 Mass. 60 (1987). Since that decision, Williams has filed several additional appeals.

\* In 1988, Williams filed a motion for post-conviction relief alleging ineffective assistance of counsel related to the alleged failure to present evidence concerning the victim's cause of death.

\* In 2006, Williams sought to amend his 1988 motion for post conviction relief, again focused on the victim's cause of death, and Williams' contention that the negligence

of the victim's treating physicians, not Williams' stabbing of the victim, caused the victim's death. This motion was denied on December 18, 2006, by the Superior Court (Lauriat, J.),

\* In 2007, Williams sought leave to appeal Judge Lauriat's denial of post-conviction relief, which was denied by Justice Ireland on July 31, 2007.

\* In 2009, Williams filed a third motion for a new trial challenging the jury instructions and alleging ineffective assistance of his trial counsel. The court (Kotmyer, J.) denied that motion on March 12, 2009.

In 2018, Williams filed an application for Writ of Error Coram Nobis alleging that newly discovered evidence, an x-ray of the victim's skull, demonstrated that the victim was never stabbed in the skull and brain, and that the testimony of the medical ~~expert~~ examiner was error and the death certificate that was entered to corroborate the medical examiner's testimony, was also error. The application for Writ of Error Coram Nobis was denied on April 4, 2018.

A timely appeal was taken to the Supreme Judicial Court of Massachusetts and denied on April 11, 2019, by the gatekeeper. Approval of a Supreme Judicial Court Justice sitting as a gatekeeper is required in the Commonwealth of Massachusetts.

A timely motion for reconsideration was filed and denied on May 9, 2019.

REASONS FOR GRANTING THE PETITION

In McClesky v. Zant, 499 U.S. 467 (1991) and the United States Senate in the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, this court and the United States Senate held that actual innocence would trump all procedural bars. Yet, counsel for the sovereign has argued that ineffective assistance of counsel is precluded. Williams presents, here and now, to this court, that the claim presented is one of actual innocence. Any reference to ineffective assistance of counsel is dicta and for clarification and understanding to this court.

Williams' claim is actual innocence, which was not known at trial insofar as it involved the x-ray of the victim's skull and brain, a matter which has come into his possession most recently. The x-ray was known to the Commonwealth of Massachusetts prosecutors, but withheld from the defense. This is violation of Brady v. Maryland, 393 U.S. 83 (1963) as well as Giglio v. United States, 405 U.S. 150 (1972), which has been explained by this court in Kyles v. Whitley, 514 U.S. 419 (1995), for prosecutorial misconduct of withholding exculpatory evidence, which is what has happened in this case. The aforementioned holding and explanatory cases are reaffirmed and strengthened by Schlup v. Delo, 513 U.S. 298 (1995) which this court reaffirmed in House v. Bell, 547 U.S. 518 (2006) and Wearry v. Cain, 136 S.Ct. 1002 (2016).

The issue presented in this petition is that of actual innocence. And that issue flows from a denial of the Brady/Giglio holding. An issue that counsel for the sovereign has not addressed in any of its pleadings or responses.

To be clear and eliminate any misunderstanding, Williams is arguing actual innocence, and the holding of the Supreme Judicial Court of Massachusetts is out of step with other jurisdictions and specifically out of step with the Second Circuit that will be explained in greater detail infra, under the section dealing with reasons to allow the petition.

United States District Court Judge Allison D. Burroughs of the federal District of Massachusetts, in an order dated April 18, 2019, at page 4, footnote 2, has stated that assuming the newly-digitized x-ray of the victim does not show a stab wound to the head, her position was still that the cause of death would not matter, and that is just an incorrect statement of constitutional law that this court has held otherwise in myriad cases. See Appendix C.

In Howe v. Town of North Andover, 784 F.Supp.2d 242 (1st Cir., 2011) the First Circuit District Court in Boston held and recognized that a death certificate may be amended in Massachusetts. And, the Second Circuit held in Baden v. Kock, 1984 U.S. Dist. LEXIS 24835 that in certain exceptional cases, the death certificate must be amended where the person seeking relief had been charged incorrectly and on the basis of an incorrect death certificate. Thus

in the instant case, where Williams seeks to correct the death certificate to guarantee that justice be served, and because the papers in the lower courts are presently incorrect, and Williams is suffering a loss of liberty, because of the error aforementioned, and that the Massachusetts Supreme Judicial Court is out of step with the First and Second Circuit District Courts, and justice has not been served and there has been a miscarriage of justice in the Williams' case, it is respectfully urged that this court accept the case and order that the death certificate be corrected to show the true cause of death, or at the very least, that the death certificate reflect the true cause of death was not a stab wound to the skull and brain, and that this was not a homicide.

Furthermore, the Appendix A contains false and misleading data. Judge Christopher K. Barry-Smith held at page 4, paragraph 1, that Williams "acknowledges that he stabbed the liquor store clerk multiple times in the head and upper body." That is a false statement and not supported by the record. Nowhere can any such concession be found in the record. Williams has always maintained that the victim was never stabbed in the head, and the newly discovered x-ray substantiates that fact, the x-ray, digitized and on a thumb drive will be delivered to this court once a docket number is assigned to this appeal.

It is respectfully urged that this court get the correct data to show actual innocence.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Williams, Jr.

Date: June 10, 2019