No. 19-6244

ORIGINAL

Supreme Court, U.S.
FILED
OCT 01 2019
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

EUGENE WILLIAMS SR. , PRO-SE — PETITIONER
(Your Name)

vs.

HAROLD W. CLARKE , DIRECTOR OF DEPARTMENT OF CORRECTIONS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

EUGENE WILLIAMS SR.
(Your Name)

WALLENS RIDGE STATE PRISON
(Address)

BIG STONE GAP , VA. 24219
(City, State, Zip Code)

276-523-3310
(Phone Number)

QUESTION(S) PRESENTED

#1. Whether ineffective assistance of counsel was shown when court appointed counsel left criminal practice to persue insurance law in the middle of my appeal which cause my appeal to be dismissed due to procedural error?

#2. Whether a violation occurred when a juror lied during the voir dire process to the court about prior relationships and being able to give a unbias and fair ~~trial~~ trial to the defendant?

#3. Whether its unethical and a clear violation of law when the prosecutor allowed and used perjured testimony from they witnesses, that the prosecutor known is perjuring theyself.

#4. Whether exculpatory Evidence obtain by any commonwealth employee and withheld by them, away from the defense falls on the responsibility of the commonwealth attorney?

#5. Whether or not, when requested by Motion of Discovery, all exculpatory evidence is to be handed over as a whole and/or seen its known and available and not in pieces and withheld because certain exculpatory evidence wasn't specifically asked for.

#6. Whether ineffective assistance when shown by trial lawyer when he was made aware of a juror conflict, notified the commonwealth (by letter) of conflict but reply that he didn't plan on doing nothing about it and that his (trial lawyer) would be getting off my case soon anyway?

#7. Whether trial judge erred when he avoided juror issues/conflict when made aware by defendant at the sentencing (in transcript) by responding that he didn't know of a violation where a juror wasn't allowed to know the defendant?

#8. Whether trial judge erred by refusing to strike damaging testimony after and objection was made and sustained by the court, instructions to give no weight to that testimony ~~was never~~ during deliberations was never ordered by the court?

#9. Whether the testimony of them current inmates with pending charges can be crossed examined with ~~evidence~~ or ~~questions~~ questions pertaining to their pending charges or plea deals influencing their testimony

#10. Whether the court erred by avoiding to check the mind state of (2) jurors after being made aware by (3rd) juror that his mind state wasn't right after seeing the images from a previous trial that he and (2) other jurors had just done a week earlier.

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:

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INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

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 _____ 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 of Appeals of Virginia 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.

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 July 15, 2019. A copy of that decision appears at Appendix A.

[ ] 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

1. 8.01.299 (D)
2. 8.01.654 (A)(2)
3. Code of Virginia 18.2.32
4. Code of Virginia 18.2.95
5. Code of Virginia 18.2.53.1

STATEMENT OF THE CASE

STATEMENT OF THE CASE

On June 15, 2011, at approximately 7a.m., Mr. Dennis Johnson, a housekeeper for the Cromwell House, approached the window of apartment B-117 during his morning cleaning routine. He was drawn to the window because he was acquainted with the resident of B-117, Mr. Louis Daniel, and Mr. Johnson thought it strange the screen had been removed from the window. Upon looking into the apartment Mr. Johnson saw Mr. Daniel, a slight elderly white male, lying, unresponsive, on the floor of the apartment.

The authorities were called and upon their arrival Mr. Daniel was found to be deceased with multiple blows to the head, determined to be from a blunt object, and a fatal gunshot wound to his abdomen which had entered his liver and severed his vena cava. The authorities were able to determine from a "dust void", a remote control, and an owner's manual, that a Samsung 32" flat screen TV had likely been taken from the apartment. Investigators also were unable to find Mr. Daniel's wallet at the scene. Forensic analysis established the presence of a palm

print on the window sill of the apartment which was determined to match the records of the Defendant. (Tr. 382)

An arrest warrant issued for the Defendant on June 16, 2011. (Tr. 214) In a search incident to the arrest, officers recovered a 32" Samsung flat screen TV from The Defendant's bedroom (Tr. 328), and a .38 Special cartridge outside The Defendant's apartment. (Tr. 400) During custodial questioning at the Norfolk POC, the Defendant initially denied to having been in Louis Daniel's apartment and claimed to have purchased the TV at a flea market (Tr. 394), as he runs a business of buying, fixing, and selling laptops and TVs. (Tr. 396) The Defendant later admitted to having been in the Daniel apartment, on the evening of June 14, at the direction of one Anthony Scott, a social acquaintance who told the Defendant that he was aware of a TV that someone wanted to sell. (Tr. 398) The Defendant followed Scott into B-117 where the Defendant paid Scott for the TV before Mr. Daniel came out of another room and Scott began to strike him repeatedly (Tr. 649). The Defendant took the TV and climbed out of the apartment window. As he moved away from the scene he heard a gunshot and saw Scott outside the apartment holding a gun. (Tr. 650) The Commonwealth produced testimony of convicted

felons, and current inmates who testified as to admissions made by the Defendant while in custody. The trial court refused to allow questions concerning motive that these witnesses may have had to testify falsely because of pending charges. (T.T. 368)

The Defendant testified that he had been in the vicinity of the Cromwell House earlier in the day on the 14th when he and his children's mother were looking for apartments adjacent to Cromwell House. (T.T. 628) The Defendant stated that he wished to show her the Cromwell House because she was a nurse and the Cromwell House employs healthcare professionals to aid the elderly residents. (T.T. 628) While both were at Cromwell House, the Defendant indicated that he helped Mr. Daniel replace his window screen outside apartment B-117. (T.T. 642)

On or about June 20, 2011, Detective D. A. Benjamin obtained a search warrant for the Defendant's cell phone records in order to investigate the grounds of the Defendant's assertions and those of the Commonwealth's witnesses. (T.T. 288) These records were also sought by the Defendant as part of potentially exculpatory evidence in order to show the false witness testimony at trial. (T.T. 286) The Commonwealth never responded to the Defendant's request.

During the jury selection process, the jurors were asked by counsel whether they had any prejudices or any reason to believe that they would not be able to give an unbiased opinion in the matter before them. ([redacted]) Some jurors were excused but others, namely jurors, Ms. Angela West and Ms. Sandra Fields remained silent despite their not only having a prior relationship with the Defendant and his family, but a grudge against the Defendant and his family. ([redacted])

During trial, the trial court sustained an objection by the Defendant which ceased the testimony of Detective Benjamin, who was found to be reciting the Commonwealth's evidence rather testifying to the contemporary reasoning behind his decisions to seek charges against the Defendant and not Scott. ([redacted]) While the testimony was stopped, the recitation testimony that has already been uttered by the witness was permitted to remain on the record.

STATEMENT OF THE CASE

On August 1, 2012, the Circuit Court for the City of Norfolk convicted me of First Degree Murder, Grand Larceny, Armed Burglary and, 2 counts of Use of a Firearm in the Commission of a Felony. I also received 2 probation violation revocations as a result. On October 31, 2012, I was sentenced to LIFE plus 38 years of active incarceration.

The Court of Appeals denied my petition for appeal on September 3, 2012 and, despite the assistance of counsel, this Court denied my appeal on October 29, 2013 because "it was premature".

I initially submitted a habeas petition for writ of habeas corpus to this Court on June 14, 2013, while still represented by counsel for direct appeal purposes, but it was denied on November 13, 2013.

On January 21, 2014, this Court again denied my second petition for appeal, refusing to hear assignments of error one through five and seven through ten and procedurally dismissing assignment of error six because it failed to comply with a rule requirement.

On March 2, 2018, I filed the instant petition for writ of habeas corpus in the Circuit Court for the City of Norfolk alleging that my appellate counsel, in the second petition for appeal, was ineffective for failing to properly perfect the appeal to this Court.

Without a hearing on the issue presented, the habeas court adopted the findings made by the Office of the Attorney General and endorsed its proposed final order dismissing my petition as untimely pursuant to Va. Code §8.01-654 (A)(2).

A timely Notice of Appeal was submitted.

REASONS FOR GRANTING THE PETITION

Reasons for Granting the Petition

& [redacted]

1. Whether evidence presented to the jury was sufficient to support a finding of guilt given the nature of the Commonwealth's witnesses to have either been employees of the state, state and federal inmates potentially receiving sentence reductions for testimony, or ex-felons who were pressured by the Commonwealth to testify in favor of the prosecution.

In this case, the trial court erred when it determined that evidence was sufficient to permit the question of guilt to be submitted to the jury, as no reasonable juror would have found such evidence sufficient to support a finding of guilt. "The conclusions of the fact finder on issues of witness credibility 'may only be disturbed on appeal if this Court finds that [the witness'] . . . testimony was 'inherently incredible, or so contrary to human experience as to render it unworthy of belief.'" *Moyer v. Commonwealth, 33 Va. App. 8, 28, 531 S.E.2d 580, 590 (2000);* citing *Robertson v. Commonwealth, 12 Va. App. 854, 858, 406 S.E.2d 417, 419 (1991).*

Here, the testimony of the Commonwealth's witnesses should be considered inherently incredible for multiple reasons. The evidence that has been presented against the Defendant is purely

circumstantial, no one saw him commit the alleged crimes against Mr. Daniel, and the fact that Mr. Daniel's TV was recovered from the Defendant and that his palm print was found at the scene is reasonably explained by his account of the facts surrounding his actions on the 14th to the 16th of June, 2011.

The Commonwealth, given its lack of evidence, resorted to pressing people surrounding the Defendant to support their allegations against him. The Defendant's girlfriend was threatened with the loss of her child (Tr. 852) and actually had charges leveled against her prior to her agreement to testify on behalf of the Commonwealth. (Tr. 852) Similarly, Anthony Scott had charges brought against him in connection with this case and similarly those charges were dropped and he became a witness for the Commonwealth. (Tr. 844) Mr. Taylor and Mr. Poe are both incarcerated and though they potentially stand to have their sentences reduced for their testimony, such evidence was not permitted given the pending nature of the charges against them. (Tr. 860). All of these witnesses are "inherently incredible." The fact that many of these witnesses faced charges prior to their decision to testify is not a simple matter of prosecutorial discretion, but rather the

Commonwealth using their authority to intimidate witnesses into testifying as to the Defenadant's guilt. As such, no reasonable jury could have accepted their testimony. It was error on the part of the trial court not grant the Defendant's Motion to Strike.

2. Whether the testimony of current inmates with pending charges can be cross examined with evidence or questions asking whether their pending charges or any plea agreements are influencing their testimony. (T.P. 369).

The trial court abused its discretion when it sustained the objection of the Commonwealth to suppress evidence that the Commonwealth's witness, Mr. Taylor, had pending charges against him at the time of testimony. While it would normally not be permitted to use any bad acts other than previous felony convictions to impeach the testimony of a witness the question of pending charges was not being used to show bad character in this instance.

Mr. Taylor, much like most of the other circumstantial witnesses of the Commonwealth in this case, had either previous felony convictions, were currently incarcerated, or had pending charges against them. Each one of these three circumstances afforded the Commonwealth a certain degree of leverage over these witnesses

such that their inclination to adopt the Commonwealth's perspective may not have been without the possibility of self benefit. The weight to be given to witness testimony is left to the fact finder, and while an incarcerated witness may still be relied upon, such reliance may shift if the fact finder understands that the witness if being offered a reduced sentence or other inducement for their favorable testimony.

By not permitting such possibilities to come to light in this case, the jury was left in the dark as to the possible motives behind why Mr. Taylor, and numerous other Commonwealth witnesses may have chosen to testify against the Defendant. By not allowing this evidence be admitted, the trial court erred in that this evidence would likely have swayed the jury to give less credence to the Commonwealth's witness over that of the Defendant.

3. Whether a witness reciting the evidence of the Commonwealth as his own testimony should be stricken from the record and the jury given instruction to ignore the testimony rather than having the testimony simply stopped upon objection.

The trial court should have stricken the testimony of Detective D. A. Benjamin concerning an objection of the Defendant on the grounds that stating his reasons for charging the Defendant and not

Scott, he began to recite all of the Commonwealth's case which would not have been known to him at the time. As such, this testimony was not evidence but argument.

The objection made by the Defendant was sustained by the trial court. The jury, however, was not informed of the impropriety of the testimony which had already been given, and was not told to disregard the testimony, nor was the testimony stricken from the record as would have been appropriate. The prejudicial effects of the testimony of a police officer asserting reasons why he thought one suspect was guilty but not another was error and it was plain error on the part of the trial court to not have the testimony stricken from the record and instructed the jury to disregard same.

4. Whether the seating of multiple jurors that had interests or relationships with the Defendant and his family constitutes grounds for vacating or setting aside the jury verdict.

The trial court erred in finding that there was no misconduct on the part of the Jurors, Ms. Fields and Ms. West. Whether evidence of juror prejudice creates a duty upon the court to vacate a judgment is not directly supported by the laws of the Commonwealth, as pointed out by Counsel in the hearing on this matter. (T.R. 04) However, there

is support within the findings of Virginia Courts that where extraneous evidence of juror prejudice comes to light suggesting that a juror showed prejudice outside of the jury room, such a finding may warrant an examination of that juror to determine if any prejudicial taint exists. *Hash v. Commonwealth, 2002 Va. App. LEXIS 541;* citing *Bradshaw v. Commonwealth, at 491.*

In this case, evidence of juror prejudice was presented to the trial court at the October 5, 2012 hearing. The letter from the Defendant's mother clearly indicated that a negative relationship existed between herself and two jury members who had falsely testified to having no pre existing biases or prejudicial relationships with any parties during jury selection. Furthermore, the testimony of Mrs. Williams in this post-trial hearing shows that these jurors made negative and threatening looks at the Defendant and Mrs. Williams during trial, followed Mrs. Williams during recesses, and were making prejudicial gestures while in the jury box. (HT 2/10)

While there may not be a basis upon this letter alone to vacate the judgment of the trial court, the trial judge erred by not giving this testimony its due weight and examining the implicated jurors to determine that the allegations of prejudice were groundless. The

issuance of a judgment and the crimes for which the judgment in this case is based are not matters to be taken lightly, and if testimony comes to light to indicate that a fact finder may have been acting in bad faith, or even committed perjury by not disclosing a pre-existing bias, such an implication should not be simply dismissed as an "11th-hour request from a mother" to save her son (R. 282)

5. Whether the failure of the Commonwealth to respond in any way to Mr. Williams' request for exculpatory evidence associated with the Commonwealth's subpoena of his cell phone records, constitutes grounds to vacate or set aside the judgment on the basis of unconstitutional prosecutorial misconduct.

The trial court erred when it denied a motion to set aside judgment on the basis of the failure of the Commonwealth to disclose or even respond to a request for specific evidence of an exculpatory nature. Under *Brady v. Maryland, 373 U.S. 83 (1963),* the prosecution has a duty to disclose exculpatory evidence to opposing parties. In Virginia, "failure to disclose [such] evidence requires reversal only if the evidence was 'material,' and evidence is 'material' only if there is a reasonable probability that had the evidence been [timely] disclosed to the defense, the result of the proceeding would have been

different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Hash v. Commonwealth, at 556;* citing *MacKenzie v. Commonwealth, 8 Va. App. 236 (1989).*

Here, the guilt of the Defendant depended upon the belief of the Commonwealth's witnesses' stories versus that of the Defendant. Circumstantial evidence of what the Defendant did after the death of Mr. Daniel included him making phone calls to Ms. Smith in the early morning hours after the crime was allegedly committed in order to have her hold a firearm for him. (T. 5/28) If the phone records subpoenaed by the Commonwealth had shown a phone call having been made by the Defendant to Ms. Smith it can be presumed that such a record would be included in the evidence of the Commonwealth. The Defendant's request to have such evidence turned over was not complied with. Had such evidence been turned over, it is reasonable probabability that the absence of a phone call between the Defendant and Ms. Smith would have sown doubt in the minds of the jurors to a degree that a finding of guilt would have been significantly lessened.

The decision in *Brady v. Maryland* clearly shows that the courts, while mechanisms of the state, will not permit the state to withhold or

discard evidence that is potentially exculpatory in nature. Furthermore, even where such a withholding is unintentional, the state should not be able to benefit from any advantage that nondisclosure brings. Here, whether the Commonwealth intended to or not, information of a potentially exculpatory nature was withheld from the Defendant and his defense suffered as a result. And because of the ~~[illegible]~~ misconduct committed by ~~[illegible]~~ the prosecutor and the unfair jury trial that I (defendant) was subject to, along with the ineffective assistance I recieve during trial as well as post trail. To have the decision of the lower ~~trial~~ trial court overturned or at least reopened to be remanded would start to show that ~~[illegible]~~ there is justice for all. ---

V. CONCLUSION

The Defendant, by counsel, respectfully submits that the judgment of the trial court be reviewed and reversed, and that the indictments be dismissed; or, in the alternative, that this case be remanded for a new trial.

EUGENE WILLIAMS, JR.

By: _____
Of Counsel

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REASON for granting the petition

~~ARGUMENTS~~

I. **The habeas court erred when it found the petition for a writ of habeas corpus untimely pursuant to Va. Code §8.01-654 (A)(2).**

The habeas court's interpretation of Va. Code §8.01-654 (A) (2) and reliance upon the respondent's argument was misplaced. As decided in Hicks v. Director, 289 Va. 288 (2015), this Court opinioned that §8.01-229 (D) applies to habeas proceedings and ***makes an exception*** to petitions filed after the limitations period when a petitioner can show that he/she was obstructed from filing the petition earlier, then "the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought".

In *Hicks*, this Court found that there is to be a tolling of the statute of limitations if facts that give rise to a claim were not available to a petitioner. The facts and circumstances involved in my case are substantive ones because they **change** the factual circumstances of my case and, in essence, the reason for the delay in submitting my petition for writ of habeas corpus prior to when I did.

There is no indication, in either the wording of the statute or the opinion given in *Hicks*, that an obstruction must be by the prosecution or that the issue can only be in regards to Brady v. Maryland, 373 U.S. 83

(1963), material.

If it can be shown that I was not made aware of this Court's dismissal of my second appeal, or that counsel waited until recently to forward my case file to me following his representation, then this obstruction would excuse an untimely filing.

II. <u>The habeas court erred when it failed to conduct a hearing prior to its dismissal of the petition where issues of timeliness and exceptions to timeliness were not addressed.</u>

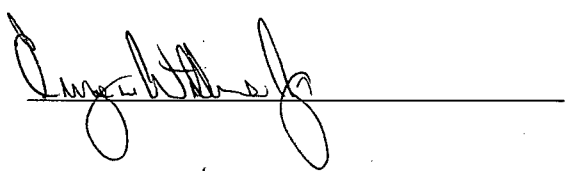
As argued in the first issue of this appeal, if it can be shown that I was not made aware of this Court's dismissal of my second appeal, or that counsel waited until recently to forward my case file to me following his representation, then that obstruction would excuse an untimely filing pursuant to §8.01-229 (D).

Thus to the extent necessary, the habeas court could not have escaped this inquiry without first the court conducting an evidentiary hearing on the issue of whether circumstance existed that would have excused an untimely filing. To simply endorse a proposed final order that did not address an issue unresolved on the record was in error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 1, 2019