

No. 19-1041

19-6846

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

James W. Riley
(Your Name)

— PETITIONER

FILED
OCT 06 2019

OFFICE OF THE CLERK
SUPREME COURT U.S.

vs.

Warden James T. Vaughn Correctional Center
And

— RESPONDENT(S)

Attorney General Of The State Of Delaware
ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court Of Appeals

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

PETITION FOR WRIT OF CERTIORARI

James W. Riley

(Your Name)

James T. Vaughn Correctional Center
1181 Paddock Road

(Address)

Smyna, Delaware 19977

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Where the trial judge failed to review evidence of trial counsel's gross misconduct of Fraud identical to the issues addressed in this Court's decision in McCoy v. Louisiana - Do petitioner possess a right under McCoy to Reopen his prior habeas proceedings pursuant to Rule 60(b)(3) & (6) where NO court Ever reviewed the evidence of counsel's misconduct necessary for adjudication of ineffective assistance of counsel claims under Seven (7) Standard of Reviews established by the United States Supreme Court, Third Circuit Court and State Court caselaw?

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:

RELATED CASES

Riley v. State of Delaware
No. 207,2010 United States Supreme Court
(Pending)

Riley v. State of Delaware No. 13-9254
United States Supreme Court. (denied)

In Re: James W. Riley (2244 Petition)
No. 14-3776 3rd Cir. Ct. (denied)

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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 A 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☒ is unpublished.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 B 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☒ is unpublished.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 appears at Appendix _____ 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 June 27, 2019.

☐ 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: September 16, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (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 _____.

☐ 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

5th Amend. To U.S. Const. : No person shall be held to answer for a capital... crime [or] shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process law.

6th Amend To U.S. Const. : In all criminal prosecutions, the accused shall enjoy the right to trial by... An impartial jury... [and] to have the assistance counsel for his defence.

14th Amend. To U.S. Const. : No State shall... deprive any person of life, liberty, or property, without due process of law ; Nor deny to any person within its jurisdiction the equal protection of the law.

Statement Of Facts

In 2003 the petitioner was retried for capital murder and robbery in the Superior Court of Dover Delaware. At the time the State of Delaware was engaged in an illegal death penalty / plea bargain scheme which subjected capital murder defendants to a greater probability of being sentenced to death. This scheme involved the trial judge's illegal sentencing authority under the death penalty statute 11 Del. C. § 4209 and the trial counsel's erroneous advice to plea guilty to capital murder with the aggravating factor automatically established sealing a defendant's fate to execution in a short period of time, because the guilty plea forfeit all appeal rights. (See Petitioner's Nov. 28, 2018 Letter To District Court Judge Connolly describing this illegal plea bargaining policy, App. F).

During the pre-trial stage of petitioner's re-trial his trial counsel and the trial judge utilized this illegal plea bargain / death penalty scheme against petitioner. When petitioner refused to plea guilty to capital murder his trial counsel retaliated by forging a fraudulent claim that there are documents in petitioner's case files containing incriminating admissions to capital murder which ethically prohibit him (trial counsel) from pursuing an alibi defense or defending against the fingerprint evidence.

Petitioner disagreed with counsel's false accusations and requested a privated hearing with the trial judge so counsel would be directed to produce any documents containing any allege confessions. However trial counsel argued against the trial judge holding a hearing to inspect the evidence. The judge agreed and did not determine the truthfulness of the actual existence of an incriminating confession in which petitioner contend is false!

Because of counsel's gross misconduct and the judge's inaction, petitioner opted to represent himself. Many of petitioner's 6th Amendment autonomy rights were violated by counsel's misconduct. Ultimately, petitioner was convicted and sentenced to life in prison for murder and robbery.

Petitioner appealed these gross violations through the STATE and Federal Courts to no avail. see *Riley v. STATE*, 867 A.2d 902 (Del. 2004) and *Riley v. Carroll*, 2007 U.S. Dist. LEXIS 44770. All courts refuse to review the evidence of the actual existence of a confession in relationship to petitioner's ineffective assistance of counsel claims that counsel's misconduct prejudice petitioner's right to a fair trial, right to testify and right to alibi defense.

In 2018 this Court issued its decision in *McCoy v. Louisiana*, 2018 U.S. LEXIS 2802. Since the issues in *McCoy* are identical to the issues in petitioner case, on August 9, 2018 petitioner filed a Rule 60(b) motion

To Reopen his prior habeas proceedings in the Delaware District Court. (see Motion To Reopen, App. D). In support of Motion To Reopen petitioner wrote Judge Connolly a Letter dated October 3, 2018 laying out the Standard of Review for claims that when a trial counsel accuse his client of perjury or is attempting to commit perjury what the courts must do as a remedy. (see App. E)

Despite the mandate of the applicable law, the district court disregarded its application to petitioner's claims and because of this failure to follow the law petitioner's ineffective counsel claims and Rule 60(b) claims were never adjudicated on the merits.

On December 14, 2018 the district court denied petitioner's Motion To Reopen, ruling that this Court have not made its McCoy decisions retroactive. (see Dist. Ct. Decision, App B).

On December 29, 2018 petitioner petitioned the Third Circuit Court of Appeals for a petition for certificate of appealability. (see COA, App. G).

On June 27, 2019 the Third Circuit denied the COA. (see Order, App. A). Petitioner's petitioned for re-hearing en banc which was also denied. (see Rehearing Petition (App. H) and Order of denial (App. C).

The Reason For Granting The Writ

In The Federal Court Rule 60(b)
Proceedings Petitioner Was Denied
Due Process Of Law Under All United
States Supreme Court Cases And
Circuit Court Cases Governing
The Standard Of Review And The
Adjudication Of The Issues Of
"Fraud"

In 2018 petitioner filed a Motion To Reopen his first habeas corpus proceedings pursuant Rule 60(b)(3) & (6) of the Federal Rules And Civil Procedures based upon fraud and this Court's decision in McCoy v. Louisiana which addresses similar issues as in petitioner's case. In McCoy this Court cited A Delaware case, Cooke v. State, 977 A.2d 803 (Del. 2009), that identify similar gross trial counsel misconduct which violated Cooke's 6th Amendment autonomy right not to plea guilty and to have a trial guaranteed by the United States Constitution. The only difference between McCoy, Cooke and petitioner's cases is that the counsels for McCoy and Cooke ceded their guilt to capital murder without consent. In petitioner's case his trial counsel did not get a chance to cede his guilt because petitioner opted to represent himself. In retaliation, trial counsel made false accusations that there was evidence in petitioner's

case files that petitioner made incriminating statements to prior postconviction counsels and psychologists in 1987. Trial counsel then used this false evidence in an attempt to pressure petitioner into pleading guilty to capital murder. When comparing the counsels misconduct in McCoy, Cooke and petitioner cases, the misconduct in petitioner's case is much more severe and direct because petitioner's counsel made deliberate false accusations against petitioner.

Counsel's misconduct satisfy the fraud exception to Rule 60(b) (3) & (6). However the district ruled that the McCoy decision did not apply because this court did not say its decision was retroactive. (See District Court Decision App. B).

In denying petitioner's Rule 60(b) motion the district court still refused to review any evidence under the Firm Factual Basis standard of *United States ex rel. Wilcox v. Johnson*, 555 F.2d 115 (3d Cir. 1977) or the standards of the Third Circuit Court holdings in *Herring v. United States*, 2005 U.S. 3d Cir. App. LEXIS 20300 and *Cox v. Horn*, 757 F.3d 113 (3d Cir. 2014) that require the review of all evidence in support of a Rule 60(b) motion.

No due process was ever afforded to petitioner to prove his claims against his counsel under the applicable standards of *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronin*, 104 S.Ct. 2039 (1984); *Wilcox*, *Herring*, *Horn*, and *Shockley v. State*, 565 A.2d 1373 (Del. 1989).

According to this caselaw in order to fully adjudicate a claim that... when a trial counsel make incriminating accusations against his client such as perjury or intent to commit perjury the Delaware Supreme court adopted the standard that... an attorney should have knowledge "Beyond A Reasonable Doubt" before he can determine [] that his client has committed or is going to commit perjury. see Shockley v. State, 565 A.2d 737 (Del. 1989).

The Delaware District Court adopted the Third Circuit Court standard in Wilcox, 555 F.2d 115 (1984) that an attorney needs a "firm factual basis" for determining whether his client will perjure himself.

Both the State and Federal Courts' standards of review require the court to review all evidence of a trial counsel's perjury accusation against his client under Shockley and Wilcox standards in conjunction with the cause and prejudice standard of Strickland. see Whiteside v. Scurr, 774 F.2d 1328 (8th Cir. 1984) to which Shockley cites to. In petitioner's case neither the State court nor the Federal court reviewed any evidence of counsel's false accusations against petitioner under any of the three standards of Shockley, Wilcox or Strickland which constitute a triple due process violation. Because of this quadruple due process violations the petitioner's ineffective trial counsel fraud claims remains unadjudicated on the merits.

Likewise, the Standard of Review in a Rule 60(b)(3) § 16 proceeding based upon an extraordinary claim of an egregious act of fraud is that the district court must allow petitioner to support his claims by clear, unequivocal and convincing evidence, see *Herring*, 2005 U.S. 3rd Cir. App. LEXIS 20300 pg. 2, and that the district court must consider all factors present by the petitioner in support of his Rule 60(b) motion, see *Horn*, 757 F.3d at 124.

Again, because the district court refuse to review the evidence of fraud, the claims remains unadjudicated. See District Court's Memorandum and Opinion denying motion to Reopen under Rule 60(b) which is devoid of any examination of the evidence of fraud that petitioner cite to in his Rule 60(b) motion, App.D). The Third Circuit Court basically adopted the District Court's decision in its COA review. (see COA Decision App. A).

The COA Standard of Review to consider appeals on Rule 60(b) motions is govern by *Buck v. Davis*, 137 S. Ct. 759 (2017). In *Buck* this Court held that the Circuit Court's Standard for reviewing applications of certificate of appeality (COA) is to be determined by: "(1) A threshold inquiry into the underlying merit of the claims and (2) then ask only if the district court's decision was debatable." 137 S.Ct. at 774.

In petitioner's case the Third Circuit Court bypassed the first step inquiry of *Buck* by failing to examine the underlying merits and evidence supporting the fraud claims before denying petitioner a COA.

Again, since no court has ever reviewed the evidence supporting the fraud claims, the issue of ineffective assistance of trial counsel continue to be unadjudicated by any court and the Due Process Violations committed are now in Assess of six folds of the Standard of Reviews for the claims. And the 6th Amendment Autonomy right violations (Structural Errors) equal in numbers, e.g. denial of right to impartial judge, right to counsel, right to not plea guilty, right to testify, right to alibi defense, right to impartial jury (because petitioner was forced to invoke right to self representation to protect this right) and right to due process because petitioner was denied any opportunity under Strickland and Cronic to show prejudice where All Courts - State and Federal refuse to review evidence of fraud committed by petitioner's trial counsel that prejudice petitioner's right to a fair trial.* (See Federal Court Records Appendix D, E, F).

* Also trial counsel's misconduct deprived petitioner an adequate pre-trial investigation into the Police Officers falsifying fingerprint evidence that placed petitioner at the crime scene. see STATEMENT OF FACTS of the trial evidence taken from petitioner's Opening Brief filed in the State Supreme Court at Appendix I.

CONCLUSION

Because the courts below did not provide petitioner due process of law in the initial habeas proceedings; on the Rule 60(b) motion and during the COA review to remedy gross misconduct of ineffective trial counsel fraud claims, this Court must vacate petitioner's convictions. The petition for a writ of certiorari should be granted.

Respectfully submitted,

James W. Ruby

Date: Nov. 2019