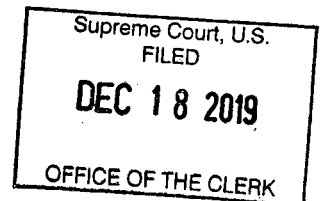


No. **19-7583**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Tiffany Byrd #591225 — PETITIONER
(Your Name)



vs.

Frederick Boute, warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tiffany R. Byrd #591225
(Your Name)

Louisiana Correctional Institute for Women
P.O. Box 26
(Address)

St Gabriel, La 70774
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether I, Tiffany R. Byrd #591225 was entitled to relief or in the alternative an evidentiary hearing on my claims of ineffective assistance of counsel where my attorney failed to impeach the prosecution main witness on known false statements.
- 2) Whether I, Tiffany R. Byrd #591225 was entitled to relief, or in the alternative an evidentiary hearing on my claims of Illegal Search and Seizure. Where illegally obtain evidence was presented to the jury.
- 3) Whether I, Tiffany R. Byrd #591225 was entitled to relief, or in the alternative an evidentiary hearing on my claims of Due Process of law when the jurors misconduct violated my rights to an impartial jury: ① Actual Bias ② Implied Bias ③ jurors silence foreclosing my attorney's ability to conduct an adequate voir dire.

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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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☐ is unpublished.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☐ is unpublished.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 _____ 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 July 23, 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: _____, 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 _____.

☐ 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

U.S. Constitutional Amendment IV

The Fourth Amendment of the United States Constitution guarantees the right to be free from unlawful search and seizures. The "exclusionary rule" says that evidence seized by the police illegally may not be introduced in the criminal trial of the victim of the unreasonable search and seizure. *Weeks v. United States*, 232 U.S. 383, 394-95, 34 S.Ct. 341, 345, 58 L.Ed. 652, 656 (1914).

U.S. Const. Amend V and XIV

The Fifth and Fourteenth Amendment of the United States Constitution guarantees the right to due process (fair procedures) and specifically in the state courts.

U.S. Const. Amend VI

The Sixth Amendment of the United States Constitution guarantees the right to effective counsel. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984).

STATEMENT OF THE CASE

On December 6, 2010 I was charged by bill of information with attempted second degree murder in violation of La Rev Stat §§ 14:27 and 14:30.1. On April 12, 2011 a jury found me guilty as charged by a vote of 11-1. On November 18, 2011 I was sentenced to seven teen (17) years hard labor. On June 5, 2013 The Louisiana Fourth Circuit Court of Appeal affirmed my conviction and sentence. On January 27, 2014 the Louisiana Supreme Court denied my application for a writ of certiorari. My conviction became final on April 28, 2014. On January 20, 2015, I filed an application for post-conviction relief with the State District Court. On August 12, 2015 the State District Court denied my application. On September 30, 2015 I filed a timely writ application with the Louisiana Courts of Appeals. On November 23, 2015 the Fourth Circuit granted review but denied relief for post conviction relief. On March 15, 2016, I filed a writ application with the Louisiana Supreme Court. On August 16, 2016 an extraordinary circumstance the historic flood in St Gabriel, Louisiana which was beyond my control flooded the whole prison. The whole prison had to be evacuated to different prisons across the state of Louisiana. In July 2017 I wrote the Louisiana Supreme Court inquiring about my pending appeal. I was later denied. On December 27, 2017 I filed an instant application for Habeas corpus relief. In the application I claimed violation of my Fourth Amend^{ment}, violation of my 5th and 14th Amend when the trial court allowed a juror who knew the victim and information surrounding the shooting to wait in the jury room with the remaining jurors until she was excused, violation of my 6th amendment ineffective assistance of trial counsel for failing to impeach witness, the victim, question Dr Meade expert witness prior to trial, investigate threatening post on facebook prior to shooting, call witnesses to testify about facebook post, listen to jail tapes prior to trial.

I now seek a writ of certiorari from this court on the three important questions presented in this case.

I'm unsure where to put this in my petition.

My petition was dismissed with prejudice. The district court dismissed my petition as barred. I claim the benefits of equitable tolling. My petition makes a substantial showing of the denial of my constitutional rights (1) ineffective assistance (2) illegal search and seizure (3) Impartial jury (jurors misconduct). Jurist of reason would disagree with the district court's resolution of my constitutional claim, and jurist would conclude my issues presented are adequate to deserve encouragement to proceed further. If the courts would please take a look at my petition you will see that the ruling is debatable among jurist of reason. Since my conviction I have resided at the Louisiana Correctional Institute for Women in St Gabriel, La. On August 16, 2016, the whole prison was evacuated due to the Historic Flood and still til this day, the prison is empty and offenders are stretched across Louisiana. I satisfied the extraordinary circumstances prong of the equitable tolling doctrine because the Flood and evacuation of the prison was beyond my control. A reasonable jurist would agree with me that I satisfied the diligence prong. I have been diligently pursuing since I was found guilty 7.11.2011. I began filing legal paper work in the courts to overturn my convictions and haven't stopped yet. Because of the flood I don't have my legal documents that are needed to fill in some information. I wrote the courts explaining that I was displaced and had something pending, but haven't received or heard anything. While waiting for a reply I was misled by the inmate lawyer who was working on my legal work that my time limitation for habeas began to run once my post conviction was final. I sincerely believed her and I thought I had a full year to file my habeas petition from 8/1/17 when my post conviction was final. I wanted for assistance from the inmate lawyer who was knowledgeable in legal work. I pray the courts consider everything I've written. I would have never waited to submit my petition had I been aware of the dead line date. (5+)

REASONS FOR GRANTING THE PETITION

The Fourth Amendment of the United States Constitution guarantees the right to be free from unlawful search and seizures. The "exclusionary rule" says that evidence seized by the police illegally may not be introduced in the criminal trial of the victim of the unreasonable search and seizure. Week v. United States 132 U.S. 383, 394-95, 34 S.Ct. 341, 345, 58 L.Ed. 652, 656 (1914).

I was denied my 4th Amendment right when illegally obtained evidence was used against me to obtain a conviction. The gun that was in my house was brought up as evidence before the jury, however it was not in plain view. The arresting officer Raynell Johnson admitted to placing me in handcuffs, then placing me in the back seat of his police car then he returned to go into my home WITHOUT a warrant and discovered an empty handgun (see trial tran pg 88). This was an invasion of my privacy. The scene was manipulated in order to be observed. He open my burgular bar door and my wooden door and peaked behind the door where the Entertainment Center (TV stand) stood in order to observe the weapon. There was an adult Ronikia Josey in the home with my two sons ages 14 and 9. There were also plenty of other N.O.P.D officers on the scene. Officer Johnson had time and the opportunity to call and get a search warrant. After viewing Defense and State photos which was placed in evidence, it will prove that the gun that was illegally seized was not in plain view. There wasnt any danger to the law officer or no risk of losing or destruction of the evidence.

The trial courts decision was unreasonable. She failed to consider the credibility of the arresting officer even after his different testimonies. If the trial court would have reviewed the state and defense photo's of the crime scene, she could have easily concluded the

Officers dishonesty of plain view and in fact the gun was illegally obtained. This would have changed the results of the trial without the prosecution being able to mention a fire arm a reasonable juror would have found it impossible to conclude the victim was shot. They would have found it impossible to return a verdict of guilty of Attempted Second Degree Murder.

Denial of Due Process of Law

The Fifth and Fourteenth amendment guarantees the right to due process (fair procedures) and specifically in the States Courts. My 5th and 14th Amendment was violated when I was denied due process of law. The trial judge was made aware of juror #14 Ms. Dione Robateau who knew the victim personally. After the judge heard juror #14 state she knew information surrounding the shooting and that she knew the victim since she was a child, Judge Johnson still allowed juror #14 Dione Robateau to return to the jury room among the remaining jurors that was picked for my trial. Ms Robateau excuse for not saying something was because she thought the prosecution said "Marla not Carla". The fact is the ADA nor my attorney said any names during voir dire. Juror #14 deliberately withheld this information until she was observed conversing with the victim in the restroom. Ms Robateau could have easily corrupted the remaining jurors that was in the jury room (see trial tran pg. 35-36). Juror #14 was bias. This made my trial unfair and impartial. The judge should have allowed a new pool of jurors to choose from. This could have changed the out come of my trial.

Denial of Effective Assistance of Counsel at trial.
The Sixth Amendment of the U.S. Constitution guarantees the right to effective counsel. Strickland v Washington, 466 U.S. 688, 104 S.Ct 2052, 2060, 80 L.Ed 674 (1984). I'm entitled to a new trial if I can show (1) that my attorney's performance was deficient; and (2) a reasonable probability that but for the deficient performance, the outcome of the proceeding would have been different. I can meet this standard by showing that my attorney failed to conduct adequate pretrial investigation. Jones v Woods, 114 F.3d 1002 (9th Cir 1997). Before an attorney can make a reasonable strategic choice against pursuing a certain line of investigation the attorney must obtain the facts needed to make the decision." Foster v. Lockhart, 9 F.3d 722, 726 (8th Cir 1993). See also Sanders v. Rattelle, 21 F.3d 1446, 1456 (9th Cir 1994).

My attorney failed to impeach the credibility of the victim based on known false testimony. Carla testified under oath she was shot nine (9) times in her right arm and twice in her left arm (see trial tran pg 213 Line 31). Dr Meade the prosecution expert witness and Emergency room attendant testified to Carla being shot not more than two times in her right arm prior to Carla testifying (see trial tran pg 50 Line 26). My attorney failed to question the expert witness Dr Meade prior to trial. Dr Meade could have easily proven the victim was shot 5-7 times. Instead of combining the shots which allowed the juror to conclude her entrance and exit wounds totalling 13 times.

My attorney was made aware of the Facebook and text messages threats I received in November 2010 prior to the shooting at an attorney visit. He didn't investigate them. His investigation would have proven provoking by the victim and her family. It would have also provided him with eye witnesses to the provoking. Mr Woods had the jail tapes prior to the trial in his possession. He waited until Saturday April 9, 2011 to call me into the office and asked me to listen and see if anything was harmful to the case on the tapes. If he would have listened to the jail tapes he could have had a better defense. He didn't listen to them which in turn he was unaware of what was said and unprepared when the tapes was presented.

It is more than likely that the results of my trial would have been different in the absence of these errors. In combination at least, these errors deprived my self Tiffany R. Byrd #591225 of a fair trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffery E. Ford #591225

December 17
Date: October 26, 2019