

19-8209

No. _____

Supreme Court, U.S.

FILED

DEC 27 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DEL GEN FOYE — PETITIONER
(Your Name)

vs.

NORTH CAROLINA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DEL GEN FOYE
(Your Name)

PASQUOTANK CORRECTIONAL INST.
(Address)

527 Commerce Drive ELIZABETH CITY, N.C. 27906
(City, State, Zip Code)

ORIGINAL
(Phone Number)

RECEIVED

JAN -7 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

QUESTION. NO. 1.

WHY AND HOW DID THE U.S. COURT OF APPEALS COURT IGNORE AND REFUSE TO ADDRESS OR MAKE A COMPLETE REVIEW OF ^{THE} RECORD PERTAINING TO THE VIOLATION OF THIS PETITIONER'S 14TH AMENDMENT RIGHT TO THE CONSTITUTION OF THE UNITED STATES. PETITIONER REAFFIRMED THIS CLAIM IN PETITIONER'S PETITION FOR REHEARING AND REHEARING FOR EN BANC FILED 9-11-19. RIGHT NOT TO INCRIMINATE HIMSELF AT TRIAL PETITIONER CONTENDS THAT HE WAS PENALIZED FOR EXERCISING HIS CONSTITUTIONAL RIGHT. DUE PROCESS CLAUSE.

QUESTION. NO. 2.

WHY AND HOW DID THE U.S. COURT OF APPEALS COURT FAIL TO ADDRESS THE VIOLATION OF THIS PETITIONER'S FIFTH AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION. PRIVILEGE AGAINST SELF-INCRIMINATION AND NOT TO HAVE HIS PAST RECORD HEARD BY THE JURY AT TRIAL. PETITIONER ALSO CONTENDS AND MAINTAINS THE FACT THAT HE WAS DENIED THE RIGHT TO PUT FORTH A DEFENCE IN VIOLATION OF HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT IN A CRIMINAL TRIAL. DUE PROCESS CLAUSE.

QUESTION. NO. 3.

WHY AND HOW DID THE U.S. COURT OF APPEALS OVERLOOK THE PETITIONER'S CONSTITUTIONAL RIGHT UNDER THE SIXTH AMENDMENT TO A SPEEDY TRIAL. SPEEDY TRIAL CLAUSE. THE CONFRONTATION CLAUSE, THE COMPULSORY CLAUSE.

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:

ERIK A. HOOKS, SECRETARY,
NORTH CAROLINA, DEPT. OF PUBLIC SAFETY et al.
NORTH CAROLINA DEPARTMENT OF JUSTICE.

NO: 5:18-HC-2091-BD

FOYE V. ERIK A. HOOKS, SECRETARY N.C. DEPT OF PUBLIC SAFETY et al.
FOR THE EASTERN DISTRICT OF NORTH CAROLINA. JUDGEMENT ENTERED FEB 6, 2019

FOYE V. NORTH CAROLINA NO. 19-6593(L) NO. 19-6660. U.S. COURT OF
APPEALS FOR THE FOURTH CIRCUIT. JUDGEMENT ENTERED AUGUST 23, 2019

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

N.C. GEN. STAT. §§ 7A-27(b) and 15A-1444(a)

OTHER

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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 DELGEN FOYE V. NORTH CAROLINA NO. 19-6693 (L) NO. 19-6666

☐ 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 DELGEN FOYE V. NORTH CAROLINA NO. 5:19-HC-2091-BO

☐ 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 C to the petition and is NORTH CAROLINA V. DELGEN FOYE NO. 23LP17

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the NORTH CAROLINA APPEALS court appears at Appendix D to the petition and is STATE OF NORTH CAROLINA V. DELGEN FOYE NO. 2016-675

☐ 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 AUGUST 23, 2019.

[] No petition for rehearing was timely filed in my case.

DF. ☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 16, 2019, and a copy of the order denying rehearing appears at Appendix F.

☒ 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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. DUE PROCESS CLAUSE. THE RIGHT OF A CITIZEN OF THE UNITED STATES TO NOT ~~TO~~ SELF-INCRIMINATE HIM-SELF AT TRIAL. DUE PROCESS CLAUSE.

THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. DUE PROCESS CLAUSE.

THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. SPEEDY TRIAL CLAUSE. THE CONFRONTATION CLAUSE. THE COMPULSORY CLAUSE.

STATEMENT OF THE CASE

Petitioner DELGEN FOYE was indicted for first degree murder and assault with a deadly weapon inflicting serious injury on December 2013. (RPP. 6-7) MR. FOYE'S CASE ON FOR trial at the 14 December 2015. CRIMINAL SESSION of CRAVEN COUNTY SUPERIOR COURT, before THE Honorable BENJAMIN G. ALFORD, SUPERIOR COURT JUDGE. on December 17 2015, a JURY FOUND MR. FOYE GUILTY of First degree murder AND NOT GUILTY of ASSAULT with a DEADLY WEAPON inflicting serious injury. ON 17 December 2015. JUDGE ALFORD entered judgement, sentencing MR. FOYE to life imprisonment without parole. MR. FOYE gave NOTICE of APPEAL of THAT judgement in COURT ON THE SAME DAY.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW.

MR. FOYE APPEALS PURSUANT to N.C. GEN. STAT. §§ 7A-27(b) AND 15A-1444(a) FROM a Final judgement entered in CRAVEN COUNTY SUPERIOR COURT.

STATEMENT OF THE FACTS

THE PETITIONER DELGEN FOYE ON TWO SEPARATE OCCASIONS STATED ON VIDEO AND AUDIO TO THE CRAVEN COUNTY SHERIFF Self-Defences.

THE PROSECUTOR AT TRIAL MADE A BLACK HANDIE BUTCHER'S KNIFE AS THE MURDER WEAPON IN NORTH CAROLINA V. DELGEN FOYE.

D.N.A. WAS FOUND ON THE BUTCHER'S KNIFE SKIN CELL THAT DID NOT MATCH THE PETITIONER BUT DID MATCH THE VICTIM BRITTS FOYE.

TWO EXPERT WITNESSES TESTIFIED AT TRIAL TO CONFIRM THIS VERY FACT.

ON JUNE 13, 2013 PETITIONER LIVED WITH HIS MOTHER AND YOUNGER BROTHER AT 312 JOHN ST. NEW BERN, N.C. PETITIONER WAS AT THE HOME OF VALERIE BROWN WATCHING THE N.B.A. FINALS BETWEEN THE SAN ANTONIO SPURS AND THE MIAMI HEAT AT HALFTIME OF THE GAME THE PETITIONER WENT HOME TO 312 JOHN ST. TO GET A PHONE CHARGER. AS I CAME INTO THE HOUSE BY WAY OF THE BACK DOOR I HEARD A LOT LOUD VOICES COMING FROM THE LIVING ROOM, BEFORE I REACHED THE ONE OF MY BROTHER'S FRIENDS WAS ON HIS WAY BACK INTO THE KITCHEN.

- CONTINUED -

WITH A PYREX JAR HEADING FOR THE STOVE TO CONTINUE COOKING CRACK COCAINE THERE WAS A SHEET THAT MY BROTHER HUNG UP AS A CURTAIN TO SEPERATE THE TWO AREAS OF THE HOUSE. I WALKED INTO THE LIVING ROOM TO SEE THAT MY BROTHER HAD AT LEAST 6 TO 7 PEOPLE IN THE HOUSE WATCHING DRINKING AND SMOKING. HE WAS SEATED NEXT TO THE FRONT DOOR, I STOPPED IN FRONT OF MY BROTHER BRITTS. AND IN FRONT OF ALL OF HIS FREINDS TOLD HIM THAT I NEEDED TO TALK TO HIM. HE SAID LATER SO I WALKED DOWN THE HALLWAY TO MY MOTHER'S ROOM TO LOOK IN ON HER SAW THAT SHE WAS STILL UP WATCHING T.V. I THEN WENT TO MY ROOM TO GET THE PHONE CHARGER AS I LEFT THE HOUSE I WENT OUT OF THE FRONT DOOR I MADE A FEW COMMENTS ABOUT THE GAME. AS I WAS GOING OUT OF THE HOUSE TWO OF OF THE MEN THAT WAS THERE WHEN I ARRIVED CAME OUT OF THE HOUSE BEHIND ME AND LEFT IN A CAR I THEN RETURNED TO MS. BROWN'S HOUSE TO FINISH WATCHING THE GAME. AFTER THE GAME WAS OVER WE LOOKED AT SOME OF THE POST GAME INTERVIEWS. AT THAT POINT IT WAS SETTING LATE SO I SAID GOOD NIGHT TO MS. BROWN AND LEFT HER HOUSE TO GO HOME FOR THE NIGHT I WAS JUST ONE STREET OVER. AS I ARRIVED ONCE AGAIN I CAME IN THRU THE BACK DOOR WALKED THRU THE KITCHEN TO THE LIVING ROOM THE FRONT DOOR WAS CLOSED THE TV WAS STILL ON BUT MY BROTHER WHO SLEPT IN THE LIVING ROOM WAS NOT THERE SO I WENT DOWN THE HALL TO ONCE AGAIN CHECK ON MY MOTHER. AS I MADE MY WAY TO HER ROOM SOMETHING MOVED IN THE OTHER BEDROOM I TURNED TO SEE THAT IT WAS BRITTS SWEATING AND BREATHING HARD I ASKED HIM WAS HE ALRIGHT HE COULDN'T TALK. SO I SAID TO HIM I SEE THAT YOU THOUGHT THAT HAVING YOUR FREINDS IN THE HOUSE WOULD PROVOKE ME NOW LOOK AT YOU AND HOW STUPID YOU LOOK RIGHT NOW I LAUGHED IN HIS FACE HE KEPT TRYING TO GET PAST ME BUT THE HALLWAY WAS SO TIGHT HE HAD TO WAIT UNTIL I LET HIM GET PAST ME. I CONTINUED TO LAUGH AND TELL HIM HOW STUPID HE LOOKED. I WENT INTO MY ROOM THEN REALIZED THAT I HAD LEFT MY PHONE CHARGER AT MS. BROWN'S HOUSE I ALSO NEEDED TO PUT MORE MINUTES ON THE PHONE AS THEY WERE TO END AT 3:00 AM THAT NIGHT SO I CHANGED FROM DARK JEANS TO LIGHT

Brown sweat pants and a white T SHIRT white tennis shoes for the bike ride to the store. I was to stop by Mrs Brown's first to retrieve the phone charger. as I was getting dressed I could hear Britts in the kitchen going thru the silverware. I heard him before I saw him come down the hallway near my door as I stepped out in the hallway I saw a long black handle knife in Britts right hand he stabbed at me I threw up my left arm and was cut on ~~my~~ my upper wrist. He stabbed again and I threw up my right arm. He cut me on the elbow of my right arm. before he could swing again I tried to grab him and hold on to him because I felt that he would kill me if I didn't stop him from stabbing me but he then stabbed me in my left palm of my hand I turned to make a run for the back door as I ran past him he cut me on the upper ^{left} side of my back as I went thru the make shift curtain. I turned right and grabbed a knife with a blue handle ~~off~~ off the kitchen counter next to the stove. I turned and faced Britts told to back off but he came forward I stabbed him in the upper left shoulder he stopped coming forward and looked at his shoulder saying that he was going to kill me. I tried once more to get out of the back door but he cut me off. there was a coffee table without the glass just the frame that sat in the kitchen I pushed it in between us we went around it a couple of times before he rushed at me I fell backwards flat on my back my legs were tangled up in the table the knife flew out of my hands towards the back wall. Britts stood over me my only defence was to keep trying to keep the table between us but he pushed it to the wall and started to stab down at me. the only way that I could stop him from hitting my body was to give him my legs to stab as I kicked at Britts to keep him off of me. I was cut five to six times on the left leg as I tried to fight him off Britts then just tried to side step my legs and stab me in the chest. but he

Too got tangled up in the coffee table and came down a tree
toward middle I braced myself knees up as he came down and the
knife that he was still holding I got to my feet first and ran to the
back door as I turned to see where he Belts was at. He got up and
I saw blood come from his arm he pulled the knife out of his arm
and came toward me I closed the door in his face turned to run
but fell down the back stairs leading to the ground I got up
and went around the back of the house near my mother's window
I could see and hear Belts talking on the phone I went thru a
path on the side of the house that led me to Kennedy Drive I went
to a friend's house David Davis to ask him to call for help Davis
did not answer his front door so I went to the back door to
knock I sat down to catch my breath. I closed my eyes when
I woke up I was on the floor of Davis' enclosed back porch as I
got up to see what was going on. I saw lights and heard wowie-tairie
sound all around me. I wait to the front house Davis was on the
front porch I called his name he told me to go back to the back
of the house. before I reached the back yard he said Ms. Brown
said for me to come to her house so I went down the front-lane
fell over a fence because I couldn't climb it because my ankle was
swollen from the fall at 312 5th St. I went to Ms. Brown's back door
and it was locked so I went around to her front door she let me
in and ask how I got so dirty I told her about the fall she told
me to go take a shower as I came out of the shower I was
arrested and stayed in Leavenworth County Jail for 30 months
before I went to trial.

REASONS FOR GRANTING THE PETITION

Reason #1, Petitioner's Rights under the six amendment to the United States Constitution, were violated and ignored by the lower courts. Petitioner's right to a speedy trial was violated by the trial court judge, and ignored by the lower courts as follows. Petitioner thru counsel on several occasions invoked his constitutional right to a speedy trial a year before the actual trial. Petitioner also thru counsel filed a motion to dismiss based on the lack of a speedy trial. The trial court's response was erroneous thus a violation of ^{the} sixth amendment to the United States Constitution. First violation: the compulsory process clause gives any criminal defendant the right to call witnesses in his favor. the trial transcript supports this fact. Petitioner's witnesses Jodie Tucker and Cecily Johnson, were at least prepared to testify on behalf of Petitioner, therefore preventing Petitioner a chance at presenting evidence to the jury in his defence in trial his constitutional right under the sixth amendment to the United States Constitution, therefore destroying Petitioner's right to put on a self-defence at trial. Second violation: the speedy trial clause under the sixth amendment to the United States Constitution criminal defendants have a right to a speedy trial.

Petitioner was arrested June 14th 2013 Petitioner went to trial December 15, 2015. the first factor in ~~balancing~~ balancing the barker v. wingo test. reason for the delay, the prosecution may not excessively delay the trial for its own advantage. the record shows that the prosecution repeatedly sent the same D.N.A. evidence to be examined before giving Petitioner a copy of the findings when the prosecution knew the results of the examination expert witnesses testified concerning this fact there were no request to delay trial from the petitioner inasmuch that petitioner filed yet another speedy trial motion yet well over 365 days pasted before trial began. second factor time and manner in which the defendant has asserted his right. on more than three occasions Petitioner invoked his sixth amendment right. if the petitioner is being accused of agreeing to a delay, where was the benefit to this petitioner in doing so. the results of the D.N.A examination was in the petitioner's favor which was known before hand by the prosecution but not known to the petitioner at the time the prosecution made the request to send this same evidence a second time. third factor Petitioner relies on factor 1, 2, to be relevant as to factor 3, which shows the times and the manner the petitioner asserted his right to a speedy trial which is guaranteed under the sixth Amendment to the

- continued -

United States Constitution. Factor four - degree of prejudice to the defendant which the delay caused, the 30 month delay caused mental as well as physical anxiety being denied the chance to go to his mother's funeral caused major anxiety to the Refilior, include the mere fact of physically being housed in the same building for the entire 30 months was and is erroneous. Third Violation: the confrontation clause, relates to the common law rule preventing the admission of hearsay, that is to say, testimony by one witness as to the statements and observations of another person to prove that the statement or observation was true. There are three instances in which the trial court allowed hearsay evidence to be presented by the prosecution in the court trial record. Brian Howard, officers Obell and Lawhorn, none of which fit within any exception to the hearsay rule and no such justification was proffered by the prosecution.

Reason 2. Petitioner's rights under the fifth amendment to the United States

Constitution were violated by the trial court and ignored by the lower courts on appeal. First violation self-investigation clause in the fifth amendment to the United States constitution. First before trial Petitioner also after arrest claimed self-defense made two interviews with detectives claiming self-defense Petitioner thru counsel filed a motion on 9-10-2014 that the Petitioner would rely on the defense of self-defense at trial, well over one year before trial there was no response to said motion, however at trial the trial court judge refused to allow Petitioner to use self-defense as a defense the trial court judge refused to allow the Petitioner to call witnesses to testify in his defense, the trial court refused to self-defense instructions to the jury as required by North Carolina law when there was overwhelming evidence in the record to require the court to do so. the trial court judge instead violated the Petitioner's Due Process rights the Petitioner invoked his fifth amendment right to remain silent at trial. U.C. law does not require a criminal defendant to testify in his own behalf to warrant a self-defense instruction to the jury, the trial judge informed the Petitioner that if he did not take the stand, he could not use self-defense as a defense. Petitioner was not given a fair chance to defend himself at trial, thereby denying this Petitioner of life, liberty without Due Process of Law. Petitioner was penalized for exercising his fifth

amendment right to remain silent at trial, the fifth amendment was introduced into the constitution by James Madison. the ideas in the fifth amendment can be traced back to the magna carta, which was issued in 1215, a defendant cannot be punished for using his right to silence during a criminal trial. the trial record shows that this Petitioner's constitutional rights were violated for using his right under the constitution that he would not be punished for remaining silent at trial. Griffin v. California, 380 U.S. 609 (1965) Syllabus.

Comment to the jury by a prosecutor in a state criminal trial upon a defendant's failure to testify as to the matters which he can reasonably be expected to deny or explain because of facts within his knowledge or by the court that the defendant's silence under those circumstances evidences guilt violates the self-incrimination clause of the fifth amendment of the federal constitution, as made applicable to the states by the Fourteenth amendment.

Malloy v. Hagan, 378 U.S. 1, 388 U.S. 610-615, 60 Cal.2d 182, 383 P.2d 432 Reversed.

Second violation: Coincides with the first violation the Penalization to Petitioner of his Miranda rights after his arrest Petitioner was not informed of his right to remain silent by the investigating detectives but was questioned and video taped before he was given an attorney. after Petitioner was given an attorney the same detectives without contacting Petitioner's attorney interviewed Petitioner a second time also video taped. Petitioner at trial sought to have the jury see those interviews of Petitioner. Petitioner was denied his constitutional right to present evidence that was favorable to his defence at trial.

Miranda v. Arizona (1966.) also Mitchell v. United States, (97-7541) 512 U.S. 314 (1999)

Reason #3. Petitioner's 14th amendment under the constitution to the United States were violated by the trial court and ignored by the United States court of Appeals for the fourth circuit. Amendment XIV Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state 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 laws. See Dred Scott v. Sandford (1857) this petitioner was not born a slave as Dred Scott was however he was born in the civil rights movement of the 1960s, he is witness to segregation, white only signs, church burnings, now mass incarceration which is now in effect as we move closer to the year 2020, constitutional rights are not being respected by the court system, rights that are a privilege under the constitution, which is citizenship & privileges clauses, due process, equal protection & disenfranchisement, all of these rights were violated in order to get a conviction by the trial court and overruled by the appeals court, therefore for the reasons the petitioner was presented to this court in this petition for a writ of certiorari, the erroneous decision of the U.S. court of appeals for the fourth circuit, should not stand it should be reversed and vacated in order to relieve this petitioner from the degradation that he has suffered for the past six years of his life due from the violations of his constitutional rights in order to convict him unlawfully, and to maintain this conviction thru erroneous decisions rather than the laws of court, which is the law of the land of these UNITED STATES OF AMERICA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dalgen Foye

Date: 12-25-2019 respectfully resubmitted on March 10th 2020