

19-8319
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

APR 10 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TARVARES JAMES WATSON --PETITIONER

VS.

STATE OF FLORIDA --RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT COURT OF APPEAL FLORIDA, FIRST DISTRICT
PETITION FOR WRIT OF CERTIORARI

Tarvares Watson, DC# J26050
Cross City Correctional Institution
568 N.E. 255th Street
Cross City, Florida 32628

QUESTION(S) PRESENTED

WHETHER PETITIONER'S CONVICTION RESULTED IN THE CONVICTION
OF ONE WHO IS ACTUALLY INNOCENT?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

1. The Petitioner, Tarvares Watson, DC# J26050, proceeding pro se, who is currently confined at Cross City Correctional Institution, 568 N.E. 255th St., Cross City, Florida 32628;
2. Sharon S. Traxler, Assistant Attorney General, Florida Bar No. 0558621, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050;
3. Attorney General of the State of Florida, Ashley B. Moody (address same);

RELATED CASES

- Watson v. State, 1D08-1439, District Court of Appeal, First District of Florida. Judgment entered August 20, 2009.
- Watson v. State, 1D10-3114, District Court of Appeal, First District of Florida. Judgment entered August 5, 2010.
- Watson v. State, 1D10-5108, District Court of Appeal, First District of Florida. Judgment entered December 8, 2010.
- Watson v. Florida, Docket # 10-9337, Supreme Court of the United States. Judgment entered May 16, 2011.
- Watson v. State, 1D13-1058, District Court of Appeal, First District of Florida. Judgment entered May 28, 2013.
- Watson v. Florida, Docket # 13-5962, Supreme Court of the United States. Judgment entered October 7, 2013.
- Watson v. Secretary of the Florida Department of Corrections, 3:13-cv-1570-J-39JBT, U.S. District Court of the Middle District of Florida, Jacksonville Division. Judgment entered August 29, 2016.
- Watson v. Secretary of the Florida Department of Corrections, 16-16774-A, U.S. Court of Appeals for the 11th Circuit. Judgment entered January 23, 2017.
- Watson v. Jones, # 16-9408, Supreme Court of the United States. Judgment entered October 2, 2017.

- Watson v. Secretary of the Florida Department of Corrections, 3:13-cv-1570-J-39JBT, U.S. District Court of the Middle District of Florida, Jacksonville Division. Judgment entered September 25, 2017.
- Watson v. Secretary of the Florida Department of Corrections, 18-10863-H, U.S. Court of Appeals for the 11th Circuit. Judgment entered May 22, 2018.
- Watson v. Secretary of the Florida Department of Corrections, Docket # 18-6400, Supreme Court of the United States. Judgment entered December 10, 2018.

CORPORATE DISCLOSURE STATEMENT

Petitioner is unaware of any parent corporations or publicly held company owning 10% or more of any corporation's stock.

Table of Contents

INDEX TO APPENDICES	v
TABLE OF AUTHORITIES CITED	vi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE PETITION	9
CONCLUSION	11

INDEX TO APPENDICES

APPENDIX A	Decision of the First District Court of Appeal of Florida
APPENDIX B	Order denying Motion for Postconviction Relief Based on Newly Discovered Evidence
APPENDIX C	Order Granting motion to amend the motion for rehearing and denying amended motion for rehearing
APPENDIX D	Order Granting motion to amend the motion for rehearing and denying third amended motion for rehearing
APPENDIX E	Florida Rule of Appellate Procedure 9.030(2)(A)(iv)
APPENDIX F	Florida Rule of Appellate Procedure 9.141
APPENDIX G	Florida Rule of Appellate Procedure 9.330(a)
APPENDIX H	Florida Rule of Criminal Procedure 3.850(b)(1)
APPENDIX I	Fifth Amendment to U.S. Constitution
APPENDIX J	Fourteenth Amendment to U.S. Constitution
APPENDIX K	Article V, section 3 of the Florida Constitution

APPENDIX L	Motion for Postconviction relief based on newly discovered evidence
APPENDIX M	Appellate Brief of Petitioner
APPENDIX N	Motion for Rehearing; Motions to amend motions for rehearing with amended motions for rehearing attached thereto

TABLE OF AUTHORITIES CITED

CASES

<u>Herrera v. Collins</u> , 506 U.S. 390, 400, 113 S. Ct 853, 860, 122 L.Ed. 2d 203 (1993)	10
<u>Jones v. State</u> , 591 So.2d 911; 1991 Fla. LEXIS 1988; 16 Fla. L. Weekly S 745 (Fla. 1991)	10

STATUTES AND RULES

Florida Rule of Appellate Procedure 9.030(2)(A)(iv)	9
Florida Rule of Appellate Procedure 9.141	7
Florida Rule of Appellate Procedure 9.330(a)	8
Florida Rule of Criminal Procedure 3.850(b)(1)	v, 5, 10

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 N/A to the petition and is

☐ reported at N/A; 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 N/A 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 A to the petition and is

☐ reported at N/A; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the State Postconviction 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 N/A.

☐ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 October 17, 2019.

A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following dates: December 9, 2019, and January 16, 2020, and a copy of the order denying rehearing appear at Appendix C and D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 Amendment to U.S. Constitution

Fourteenth Amendment to U.S. Constitution

Article V, section 3 of the Florida Constitution

STATEMENT OF THE CASE

On January 7th – 9th of 2008, the Petitioner entered into a jury trial and was convicted of the crimes of first-degree premeditated murder, armed burglary with battery, and attempted first-degree murder in the Fourth Judicial Circuit Court, Duval County, Florida, case # 16-2006-CF-16774-AXXXMA. On June 18, 2018, almost 10 and half years after the trial, a sworn affidavit was authored by Lavoris Douglas (hereinafter “the Affiant”) (App. L, p. 27-28) in which the Affiant confessed to the abovementioned crimes for which the Petitioner was convicted.

Lavoris Douglas’s sworn affidavit specifically alleges that: “somewhere mid-July in the year 2005 I [the Affiant] and a close friend of mine (Antonio Brown) happened to kidnap a dude that we knew to be a semi-league player in the dope game by the name of TV [the Petitioner], while we staked out one of his associate’s apartment-another semi-league player by the name of ‘Rome/Jerome.’ (App. L, p. 27). “I had just been kicked out of home, had no permanent place of residence and had two children on the way, which led me and my childhood friend to Spicewood Springs apartment that early summer morning strapped with an AK-47 and 12 gauge pump shotgun.” (App. L, p. 27). The Affiant alleges that “After kicking the door in” he (the Affiant) “grabbed” the Petitioner and “forced him inside” to “use as a shield,” where the deceased victim “arose out of her sleep and fired a wild shot” that “hit” the Petitioner “in his arm which caused” the Petitioner “to snatch away.” (App. L, p. 28). The Affiant alleges in the affidavit that he, “Lavoris Douglas mistakenly killed the girl and shot up Jerome,” and the Affiant also alleges that

“Tavares Watson didn’t kill that young lady, nor shoot Jerome.” (App. L, p. 28). The Affiant alleged that he (the Affiant) kept this truth hidden to himself for over “13-years” (App. L, p. 28), and the Affiant concluded that “at the time of trial” the Petitioner or “his lawyer couldn’t [ha]ve know of the aforementioned being this knowledge was concealed within me [the Affiant] to avoid prosecution.” (App. L, p. 28).

On August 6, 2018, pursuant to Florida Rule of Criminal Procedure 3.850(b)(1), (App. H), the Petitioner placed a “MOTION FOR POSTCONVICTION RELIEF BASED ON NEWLY DISCOVERED EVIDENCE” (hereinafter “postconviction motion”), (App. L), in the hands of prison officials for U.S. Mailing to the Fourth Judicial Circuit Court, in and for Duval County, Florida (hereinafter “postconviction court”). The Petitioner alleged, in the postconviction motion, that “Newly discovered evidence, in the form of the sworn affidavit of Lavoris Douglas, reveals that the [Petitioner] is actually innocent of the crimes for which he is currently convicted.” (App. L, p. 7-8). The Petitioner alleged that “this evidence qualifies as newly discovered evidence, because it could not have been known by the trial court, the party, or counsel at the time of trial, and it appears that the [Petitioner] and defense counsel could not have known of it by the use of diligence.” (App. L, p. 8).¹ The Petitioner concluded the postconviction motion by quoting

¹ This is so because the Affiant alleged that he kept this truth to himself for over “13-years” and because “all throughout this case, the Affiant was never listed in any discovery documents, nor was his name ever brought up as a prospective suspect in this case.” “His identity was not uncovered until the approximate execution of his sworn affidavit.” (App. L, p. 8).

Florida's longstanding law that the postconviction court "must accept" the factual allegations unless the trial record refutes them. (App. L, p. 21-22).

On March 27, 2019, the postconviction court entered its "ORDER DENYING [PETITIONER'S] MOTION FOR POSTCONVICTION RELIEF BASED ON NEWLY DISCOVERED EVIDENCE" (hereinafter "order"), (App. B), without holding an evidentiary hearing. The order states:

In the instant motion,, [Petitioner] alleges newly discovered evidence. The record refutes this allegation [Exhibits A, B, C, D, E, F, G, H, and I]. The newly discovered evidence affidavit does not contain any information the [Petitioner] did not already know about at the time of trial.

In view of the above, it is:

ORDERED AND ADJUDGED that [Petitioner's] Motion for Postconviction Relief based on Newly Discovered Evidence is hereby DENIED. [...] (App. B, p. 34).

Each of the record exhibits that the order references are as follows:

Exhibit A: ORDER GRANTING MOTION TO CORRECT SENTENCING ERROR (App. B, p. 36-37);

Exhibit B: JUDGMENT: RE-RECORDED TO REFLECT CHANGE TO COUNT 3 (App. B, p. 38-45);

Exhibit C: ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE (App. B, p. 46);

Exhibit D: MANDATE FROM DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT CASE # 1D10-3114 (App. B, p. 47-48);

Exhibit E: ORDER DENYING MOTION FOR POSTCONVICTION RELIEF
AUGUST 3, 2010 (App. B, p. 49-100);

Exhibit F: MANDATE FROM DISTRICT COURT OF APPEAL OF
FLORIDA, FIRST DISTRICT CASE # 1D10-5108 (App. B, p. 101-102);

Exhibit G: ORDER DENYING [PETITIONER'S] SECOND MOTION FOR
POSTCONVICTION RELIEF (App. B, p. 103-143);

Exhibit H: ORDER DENYING DEFENDANT'S MOTION FOR REHEARING
FEBRUARY 4, 2013 (App. B, p. 144-145);

Exhibit I: MANDATE FROM DISTRICT COURT OF APPEAL OF FLORIDA,
FIRST DISTRICT CASE # 1D13-1058 (App. B, p. 146-147).

The Petitioner initiated an appeal in the DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT (hereinafter "First District") pursuant to Florida Rule of Appellate Procedure 9.141, (App. F), case # 1D19-1544. The summary of the Petitioner's argument on appeal was that the "Record Exhibits A, B, C, D, E, F, G, H, and I attached to the order denying relief do not conclusively refute the newly-discovered affidavit, because said records are merely the orders and mandates from the [Petitioner's] prior postconviction proceedings and said records do not contain any account of the Affiant or his confession." (App. M, p. 2). The Petitioner stated that he "could not have known of nor could the [Petitioner] have received any benefit from the immediate confession at the time of trial," because the Affiant "stated that he kept this truth hidden to himself for over thirteen (13) years." (App. M, p. 4-5). The Petitioner also stated that "Even if the Affiant was ever suspected in

this case, the instant confession could not have been discovered through the exercise of due diligence, because trial counsel and the [Petitioner] would not have been able to compel such a statement against the Affiant's constitutional right against self-incrimination afforded by the 5th Amendment." (App. M, p. 4 FN 5). The Petitioner, again, quoted Florida's longstanding law that "where no evidentiary hearing is held below the appellate court must accept the defendant's factual allegations to the extent they are not refuted by the record." (App. M, p. 5 FN 6). On October 17, 2019, the First District "PER CURIAM. AFFIRMED." the postconviction court's order. (App. A).

On October 30, 2019, the Petitioner placed a timely "MOTION FOR REHEARING" (App. N, p. 1-8) in the hands of prison officials for U.S. mailing to the First District pursuant to Florida Rule of Appellate Procedure 9.330(a), (App. G). On November 6th, 22nd, and on December 10th, 2019, the Petitioner placed motions to amend the MOTION FOR REHEARING with the proposed amended motions for rehearing attached thereto, (App. N), in the hands of prison officials for U.S. mailing to the First District. "The basis for rehearing is that controlling points of law were overlooked or misapprehended in [the First District's] initial hearing" (App. N, p. 1). The Petitioner stated in the THIRD AMENDED MOTION FOR REHEARING that the "oversight is that the Movant's factual allegations must be accepted." (App. N, p. 27):

The [Petitioner] alleges, in relevant part, that the exculpatory information contained in the affidavit could not have been known to the Movant at the time of trial. [] This factual allegation is supported by the fact that the Affiant alleges in the

affidavit that he (the Affiant) kept this truth hidden to himself for over '13 years' [], and that 'at the time of trial' the [Petitioner] or his lawyer couldn't [ha]ve known of the aforementioned being this knowledge was concealed within me [the Affiant] to avoid prosecution.'

(App. N, p. 27-28). The Petitioner also stated that the record exhibit "portions of the limited record present the possibility of a misidentification which supports rather than conclusively refutes the exculpatory allegations in the affidavit, because the limited record does not exclude the Affiant's admission that he (the Affiant) committed the crimes for which the Petitioner was convicted." (App. N, p. 32). On December 9th, 2019, the First District entered its order granting Petitioner's motion to amend the motion for rehearing and denying Petitioner's amended motion for rehearing (App. C) and, again, on January 16th, 2020, the First District entered its order granting Petitioner's motion to amend the motion for rehearing and denying Petitioner's Third Amended Motion for rehearing (App. D). Florida law prohibits the Petitioner from appealing to the Supreme Court of Florida because the First District did not give an expressed opinion for its affirmance. See Article V, section 3 of the Florida Constitution (App. K) and Florida Rule of Appellate Procedure 9.030(2)(A)(iv), (App. E).

REASONS FOR GRANTING THE PETITION

Up to this point, the Petitioner has continuously exercised due diligence in pleading his claim of actual innocence, which has yielded the exculpatory affidavit of Lavis Douglas. The question of "WHETHER PETITIONER'S CONVICTION RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT"

can only be answered by, first, hearing the Affiant's prospective testimony in open court to determine if the substance of the affidavit presents even the smallest truth that the Petitioner was wrongfully convicted. Petitioner has pled this case throughout the Florida judicial system only to be denied the meaningful opportunity to present exculpatory testimony that would tend to prove his innocence.

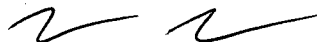
Florida Rule of Criminal Procedure 3.850(b)(1) as interpreted by the Supreme Court of Florida in Jones v. State, 591 So.2d 911; 1991 Fla. LEXIS 1988; 16 Fla. L. Weekly S 745 (Fla. 1991) provides Petitioner with a legal avenue to present his claim of actual innocence in the state courts, whereas the federal courts are prohibited from addressing freestanding claims of actual innocence in non-capital cases. See Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct 853, 860, 122 L.Ed. 2d 203 (1993); but see Jones v. State, 591 So.2d at 915 ("in order to provide relief, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial"). The fact that another has come forward and admitted full responsibility for the crimes for which the Petitioner was convicted is exactly the type of factual allegations that the Supreme Court of Florida has deemed to qualify as newly discovered evidence. See Jones v. State, 591 So.2d at 916 ("Schofield's confessions to the various inmates 1 other than Marr 2 and to Patricia Owens after he got out of jail clearly qualify as newly discovered evidence which should be considered."). The Petitioner has been denied the meaningful opportunity to present exculpatory testimony: 1) by the postconviction court's

summary denial without an evidentiary hearing; 2) by the First District's unexplained affirmance of said summary denial, which; 3) deprived Petitioner of the meaningful opportunity to present evidence of his actual innocence to the Supreme Court of Florida, who in turn would have reversed and remanded this case back to the postconviction court for that court to hold an evidentiary hearing, which is in line with the accepted and usual course of Florida's judicial proceedings as prescribed by the Supreme Court of Florida. Therefore, this Honorable Court stands to be Petitioner's Court of last resort to remedy the deprivation of Petitioner's 14th Amendment right to have the meaningful opportunity to present exculpatory testimony in an open court that is judicially able to grant a retrial if such testimony would tend to prove Petitioner's innocence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Tarvares Watson, DC# J26050

Date: April 9th, 2020