

No. [Redacted]

IN THE

SUPREME COURT OF THE UNITED STATES

TERRENCE JAMAL WILLIAMS — PETITIONER

vs.

SHERRY L. BURT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Terrence J. Williams # 588573

(Your Name)

In Pro Se

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QUESTION(S) PRESENTED

Whether counsel's failure to object to the closure of the courtroom because he did not want to draw attention to his conduct meets the *Weaver v Massachusetts*, 137 S Ct 1899 (2017), fundamentally unfair standard?

Petitioner says "YES"

Respondent says "NO"

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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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 2020 US App LEXIS 4160; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at 2018 US Dist LEXIS 56217; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.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[] is unpublished.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 state appeals court appears at Appendix to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 11, 2020.

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 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 hearing appears at Appendix _____.

An extension of time to file the petition for 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. Const. Am VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which the district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. Am XIV

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 any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner was convicted by a jury in state court of first degree premeditated murder and assault with intent to murder. He was sentenced to life without parole for the murder and 20 to 30 years for the assault.

Petitioner appealed by right to the Michigan Court of Appeals raising the denial of the Sixth Amendment right to a public trial for the closure of the courtroom and ineffective assistance of counsel. The court affirmed the convictions and sentences. *People v Williams*, 2011 Mich App LEXIS 2131. The Michigan Supreme Court denied leave. *People v Williams*, 491 Mich 921 (2012).

A petition for writ of habeas corpus was filed in the United States District Court for the Eastern District of Michigan. The court denied the writ but found that counsel's performance was deficient. The United States Court of Appeals for the Sixth Circuit affirmed the decision of the district court.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari under Rule 10(c) ...a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court...

DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO OBJECT TO THE CLOSURE OF THE COURTROOM BECAUSE HE DID NOT WANT TO DRAW ATTENTION TO HIS CONDUCT WHICH MADE THE TRIAL FUNDAMENTALLY UNFAIR.

Criminal defendants possess the constitutional right to the effective assistance of counsel at trial. US Const Ams VI, XIV; *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). To establish ineffective assistance of counsel, a defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness; and must demonstrate by a reasonable probability that the result of the trial would have been different if not for counsel's error. *Strickland, id.* A reviewing court should focus on whether counsel's errors "undermined the reliability of and confidence in the result." *McQueen v Scroggy*, 99 F3d 1302, 1311 (CA6. 1996). "On balance, the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the [proceeding] cannot be relied on as having produced a just result. *Id.* at 1311-1312. "When the appellant shows that defense counsel 'failed to exercise the customary skills and diligence that a reasonably competent attorney would exhibit under similar circumstances,' [the presumption that counsel's conduct falls within the range of competence demanded of attorneys] must fail." *Starr v Lockhart*, 23 F3d 1280, 1284 (CA 8, 1994).

In *Weaver v Massachusetts*, 137 S Ct 1899; 198 L Ed 2d 420 (2017), this Court held that when a petitioner raises a claim of violation of the Sixth Amendment for closure of a courtroom, and that claim is tied to an ineffective assistance of counsel claim, a court must concentrate on the “fundamental fairness of the proceeding.” In *Strickland, supra*, 466 US at 689, the Court stated that the existence of detailed guidelines for representation could distract *counsel from the overriding mission of vigorous advocacy of the defendant’s cause.* (emphasis added).

In this case, the only issue is whether counsel’s failure to object to the courtroom resulted in a fundamentally unfair proceeding. Both the United States district court and United States court of appeals concluded that counsel’s performance was deficient. *Williams v Burt*, 2020 US App LEXIS 4160 *14-15. The record is clear, counsel initially began the case by vigorously advocating Petitioner’s cause. Despite an admonition from the court counsel stated his intention to continue his conduct. *Williams* *5.

The Sixth Circuit on the prejudice prong made three possible reasons for counsel’s failure: (1) keep the victim’s relatives out of the jury’s view, (2) keep sensitive proceedings private, and (3) desire to avoid drawing the jury’s attention to the intimidation of the witnesses.

*15. On the prejudice for the fundamentally unfair the Sixth Circuit focused on “the jury, judge, or prosecutor ‘failed to approach their duties with the neutrality and serious purpose that our system demands.’ (citation omitted). *25.

The focus should have been on counsel’s conduct and whether he abandoned his duty for reasons unrelated to the advocacy of Petitioner’s cause. Petitioner accepts the Sixth Circuit’s conclusion that counsel may have chosen not to object to the closure of the courtroom because

counsel did not want to draw attention to the fact that counsel's conduct was partly responsible.

*16-17.

Both *Weaver* and *Strickland* standard are met where the proceeding was fundamentally unfair because counsel abandoned his vigorous advocacy of Petitioner's cause so as not to draw attention to counsel's conduct. At that moment counsel's actions were self-serving and not strategic in nature. By not protecting Petitioner's constitutional rights for selfish reasons counsel made the proceeding unfair and Petitioner is entitled to a new trial.

Furthermore, the prosecution led the Sixth Circuit to believe that Mr. Lewis testimony was all done during the open court proceedings. Also that his testimony did not change from open proceedings to closed. The record itself proves his testimony in fact did not remain the same from open proceedings to the closed proceedings. The record also proves that most of all of his testimony was done during the closed court proceedings.

Firstly, Mr. Lewis direct examination lasted for two days. (TT 1/28/08 thru 1/29/08 pg 173 line 22). His cross examination by Mr. Johnson lasted not even a half a day before the courtroom was closed to the public due to Petitioner's counsel's combative behavior. (TT 1/29/08 pg 174 line 13; 1/30/08 pg 67 line 11).

Going forward, the record shows that Mr. Lewis was cross examined, redirect and recross examined at together lasted four and a half days while the courtroom was closed to the public, and Petitioner's family. (TT 1/29/08 pg 174 line 13; 2/6/08 pg 86 line 17). Therefore, the record shows that the prosecution is wrong about his testimony was all done in a traditional courtroom setting fully open to the public. The record shows that Mr. Lewis did most of all his testimony but the direct examination during closed court proceedings.

Secondly, he testified during direct examination in open court setting when asked did he ever tell the person who took him to the hospital who shot him he testified "no, when he got to the hospital and they ripped open his shirt he seen holes in his stomach and passed out" (indicating he was shot in his stomach) (TT 1/28/08 pg 110 line 11-19).

He later testified during cross examination by Mr. Johnson in closed court setting that he was shot in the chest. (TT 1/30/08 pg 112 line 10-13). Then he testified later during cross examination by Mr. Price in closed court setting that he was shot in the chest again. (TT 2/5/08 pg 139 line 23, pg 140 line 3). The record shows that his testimony did change from open court stating he seen holes in his stomach (indicating he was shot in his stomach), to he was shot in his chest during the closed court setting. Although, the court may look at this and assume that being shot in the stomach and chest is not much different, it's a big difference from seeing holes in your stomach and being shot in the chest.

The fact is, he was never shot in the chest, and he never seen holes in his stomach when he first got to the hospital like he said. He was never shot in the stomach or his chest. When his first medical records were read the findings were that there were three holes in his right flank and one bullet in his right abdomen. When the medical records were read he changes his testimony. This time saying he was shot in this part of his body (indicating a specific area or part of his body). (TT 2/5/08 pg 146 line 6-18).

Once his second medical records were read the findings were that there were four bullet hole wound right posterior, and Mr. Price let Mr. Lewis know there's not anything in any of his medical records that says he was shot in his chest, and were he aware of that. Mr. Lewis wouldn't answer only saying I just answered your question sir. (TT 2/5/08 pg 149 line 17).

The record not only proves that Mr. Lewis testimony did in fact change many times from open to closed proceedings. The record also proves that the prosecutor and judge allowed him to perjury himself. The prosecutor allowed him to lie under oath about where he was shot, and the prosecutor knew he was not shot in the chest, or his stomach. All awhile the prosecutor allowed him to give false testimony because she read the records. The prosecutor stated on the record she read the medical records and they made her eyes bleed. (TT 3/4/08 pg 105 line 24, pg 106 line 4).

The record shows that Mr. Lewis medical records contradicts his testimony. And shows that the prosecutor and judge allowed him to perjury himself under oath. His medical records also contradicts and identification factor that he seen the driver of the van and the shooter. Petitioner further proves his position by using the trial record, two eye witnesses' statements.

Mr. Price asked Mr. Lewis if you weren't facing that direction, if you didn't get that gunshot wound, you wouldn't be able to see who was in the van would you? He responded "probably not." (TT 2/5/08 pg 140 line 6-15).

He lied about being shot in his stomach, then switching to saying he was shot in his chest. Because he knew if he told the truth about where he was actually shot, it would've been impossible for him to have seen who was driving the van and who was shooting out that van.

His first medical records says three holes on his right flank and one palpable bullet in his lower abdomen. (TT 2/5/08 pg 146 line 6-18). The second medical record says four hole wounds, right posterior. (TT 2/5/08 pg 149 line 6-17).

The word flank means the side of a person's or animal's body. The word posterior means of or near the rear or hind end, esp. of the body or part of it. The word hind in this meaning is

(esp. of a bodily part) situated at the back posterior. The medical records proves that he was shot in his right lower back area between his ribs and hip.

Therefore, he was never shot in his chest or stomach. He lied about where he was shot because he knew had he told the truth about where he was really shot it was impossible for him to see the shooter and driver of that van.

Additionally, he lied during direct examination in the open court setting stating he was sitting in the front passenger seat of the Tahoe truck body twisted facing toward the driver side window looking directly out the driver's side window when the shooting started. (TT 1/29/08 pg 96 line 11-21).

This is another false testimony by Mr. Lewis and both his medical records alone proves that fact. Because if he was actually sitting how he said he was, he would've been shot in his chest or stomach. Instead he was shot in his back making it impossible for him to be sitting how he said he was sitting. He was shot in his back therefore his back was toward the van and shooter. He lied about seeing the shooter, and driver.

Furthermore, there was two eye witnesses Keturah Tolbent and Whitney Clyburn that made statements the night of the shooting both witnesses stated "the guy in the Tahoe front passenger seat had his door open hanging out the truck dancing/being silly when the shooting started. (See Attachment C and D). Their statements were admitted into evidence at trial.

His medical records and the two witnesses statements contradicts both his testimonies about where he was shot, and how he was sitting in the truck the night of the shooting.

The prosecutor and judge had allowed him to perjury himself not once, but two times about where he was shot. The jury would've known he was shot in his back making it impossible to believe he was facing the shooter, and the van when the shooting occurred.

Furthermore, the trial judge misled the jury stating that she wasn't going to tell them what a right flank was, but turns around and tells the jury and same sentence that a posterior is position. (TT 2/5/08 pg 154 line 7-24). First of all, if the judge wouldn't tell the jury what a right flank was, why would she mislead the jury to believe a posterior was a position.

This prejudice the Petitioner because the judge mislead the jury to believe a posterior was a position and failed to tell the jury what a flank was. This was a serious issue in Petitioner's trial because had the judge not mislead the jury, the jury would've known Mr. Lewis was shot in the back. Also, if the prosecutor and judge would not have allowed him to perjury himself and allowed the jury to know he was actually shot in the back it's a strong possibility Petitioner would've had a different outcome.

Do to the fact the trial judge shut the court down to the public it prejudice the Petitioner because it's possible the prosecutor and judge would not have allowed perjury. Petitioner would have received a fundamentally fair trial, because it was fundamentally unfair for the judge to mislead the jury. And it was fundamentally unfair for the prosecutor and judge to allow the key witness to perjury himself.

The public is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.

Petitioner was not treated fairly because the prosecutor allowed perjury, so did the judge. And the judge mislead the jury to believe a posterior was a position, which isn't true. This prejudice the Petitioner because had the public been present the prosecutor and judge may have better upheld their duties to ensure Petitioner received a fair trial.

Petitioner's defense counsel failing to object to the closure of the courtroom prejudice him as well. Because had counsel objected the public would've been present therefore, the prosecutor may have not allowed her witness to perjure himself. And the judge would've better watched over this trial, and definitely not mislead the jury like she did. Had Petitioner's counsel not made the mistake of not objecting to the closure of the courtroom to the public and not been combative to the witness, it's a strong possibility it would've been a different outcome in this case.

The Sixth Circuit Court of Appeals already stated had trial counsel objected during trial Petitioner would've had a new trial. And with this new evidence (Mr. Lewis' affidavit) as well as both his medical records which prove he was not shot in his back. The facts alone mentioned in this argument shows Mr. Lewis was not situated in a manner such that he could identify the driver or shooter.

Meanwhile, Petitioner's trial counsel was surely ineffective for allowing these errors to occur during trial and ineffective for being combative toward the witness Mr. Lewis, leaving no chance for honesty. There is a possibility Petitioner's trial would've had a different outcome. Petitioner surely would've had a fundamentally fair trial..

Now that Mr. Lewis' testimony is debunked it could be a different outcome in a new trial. Petitioner asks this Honorable Court to please take time to understand the facts that's been

shown here. Mr. Ware's testimony was based on false information. With this new evidence which is Mr. Lewis' affidavit and the ballistic evidence at a retrial it would show Mr. Ware lied and sought out a deal for his testimony.

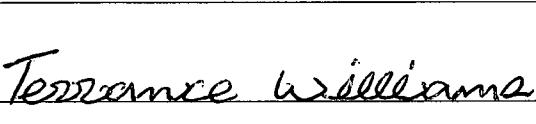
Petitioner's trial was fundamentally unfair for a lot of reasons. But the biggest reason here is, the trial court improperly closed the courtroom to the public leaving Petitioner with no witness (the public) to ensure he received a fundamentally fair trial. Petitioner is innocent and asks this Court consider the impact. All of the above details meet the *Weaver, supra*. standard.

Based upon the foregoing points and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the court below. The petition for a writ of certiorari should be granted as Petitioner was denied his federal constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Terrence Williams