

19-8413

No.

ORIGINAL

Supreme Court, U.S.
FILED

OCT 15 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Tony J. Pope #278311 — PETITIONER
(Your Name)

vs.

Jefferson Dunn — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Tony J. Pope
(Your Name)

3800 Fountain Ctr.
(Address)

Atmore, AL 36503
(City, State, Zip Code)

N/A
(Phone Number)

I

Questions Presented

First, to prevail on a 2254 claim adjudicated on the merits by the State Courts, a petitioner must show that a decision by the State Courts was "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court" or was "based on an unreasonable determination of the facts, in light of the evidence presented in the State Court proceeding; 28 U.S.C § 2254 (d)(1)+(2); see Williams v. Taylor, 529 U.S. 362, 404-05 + 412-13, 120 S.Ct. 1495, 146 L.Ed. 2d 389 (2000).

A state court's decision is "contrary to" Federal Law either if it fails to apply the correct controlling authority, or if it applies the controlling authority to a case involving facts "materially indistinguishable" from those in a controlling authority, but none the less reaches a different result.

Williams, 529 U.S. At 404-06; Bell v. Cone, 535 U.S. 685, 694, 122 S.Ct. 1843, 152 L.Ed. 2d. 914 (2002).

A state court's decision is an "unreasonable application" of Federal Law if it either correctly identifies the governing rule but then applies it to a new set of facts in a way that is objectively unreasonable, or it extends or fails to extend a clearly established legal principle to a new context in a way that is objectively unreasonable. Here in this case, Alabama State Courts, as well as the Federal District Court's decisions were unreasonable when considering the facts, for example: In the State Court trial proceeding, the State alleged that Pope committed the offenses during a certain period of time, during which, the time frame of when the alleged offenses occurred, Pope proved that he could not have committed the offenses because he was confined in Federal Prison. The State was then allowed to modify when the offenses occurred to show that Pope did commit the offenses. In other words, the State was allowed to change the dates and time frames of when the offenses

happened to show they occurred after Pope was released from federal prison. However, Pope showed and proved that he committed no offense before, during, or after his federal incarceration. This is itself objectively unreasonable. Another example is when Pope filed a petition for post-conviction relief. The Court held on to the petition for 8 months before returning it to Pope stating that Pope must pay a filing fee for each petition, and that because Pope had 41 charges, a separate petition must be filed for each charge, as well as a separate filing fee. This was unreasonable. Under state law, "a single petition may be filed against several convictions that arose out of a single trial.

Reed v. State, 748 So.2d. 231, 236 (Ala. Crim. App. 1999)

Because the court waited so long to inform Pope of its erroneous and probably wrong statement of law, it caused prejudice to Pope, and thus irregularly calculated the running time to file his 2254 petition in federal court. Pope disputed the magistrate's findings and conclusions of law, with facts and evidence that were contrary to the state court's. Pope requested the federal court to order the state of Alabama to submit certain files that were omitted from the state's filings so that Pope could show and prove his innocence. The omitted records were: 1) Pope's previously filed rule 32 petitions; 2) The police reports; 3) The department of human resource's files as they pertain to his cases; 4) Medical records of Terri Pope and Sonyette Timmes, to show that these alleged victims had contracted a sexually transmitted disease, specifically gonorrhea, while Pope was confined in federal prison; and, 5) Documents filed by attorney Thomas Haas. These documents were never submitted in federal court despite the fact that a court order had been issued for these documents. The state of Alabama had alleged that these documents were under a seal of the state court, however, no order was issued by any state court to seal these documents. The defiance displayed by

the State Court to the Court order to provide the documents was never sanctioned, and the proceedings went on its course without the documents, which in turn brought about cause and prejudice to Pope's case. A Habeas corpus petition can overcome a procedural default either through showing cause for the default and the resulting prejudice,

Murphy V. Corrigan, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed.2d. 397 (1986)

or establishing a "fundamental miscarriage of justice", which requires a colorable showing of "actual innocence,"

Schlup V. Delo, 513 U.S. 298, 324-327, 115 S.Ct. 851, 130 L.Ed.2d. 808 (1995)

Cause for a procedural default must ordinarily rely on whether the petitioner can show that some objective fact, external to the defense, impeded efforts to comply with State's procedural rules.

Murphy, 477 U.S. At. 488; United States V. Frady, 456 U.S. 152, 170, 102 S.Ct. 1584, 71 L.Ed.2d. 816 (1982). Examples of such external impediments include a factual or legal basis for a claim not reasonably available, interference with the defense by government officials, and constitutionally ineffective assistance of counsel.

Murphy, 477 U.S. At. 488

To establish prejudice, a petitioner must show that the errors worked to his "actual and substantial disadvantage", inflicting his entire proceeding with errors of constitutional dimensions. Prisoner asserting "actual innocence" as a gateway to review of defaulted claims must establish, that in light of new evidence, it is more likely than not, that no reasonable juror would have found the petitioner guilty beyond a reasonable doubt.

Schlup, 513 U.S. At. 327

Pope was impeded by the State of Alabama from presenting his case with full vigor and *Espirit-de-Corps*, by defying the federal Court's order to provide documents necessary for his defense. This defiance, ignored by the federal court,

Caused the entire proceeding to be fundamentally unfair to the point, where it was as if Pope had not filed a habeas corpus petition. Pope has submitted numerous exhibits of evidentiary documents that not only prove his claims, but also show his actual innocence, of these crimes, and that they were committed by somebody else. As the medical records of the alleged victims alone would have established Pope's innocence, why weren't the police reports handed over to Pope as a matter of law? During Pope's trial, no one from law enforcement testified for the state of defense, which was odd, considering the severity and nature of the offenses. Whereas, under the "Freddy Doctrine", The petitioner must show at least a reasonable probability of a different outcome. Alternatively, a petitioner may obtain federal habeas review of a procedurally defaulted claim if review is necessary to correct a fundamental miscarriage of justice.

Edwards v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 146 L.Ed. 2d. 518 (2000)
A fundamental miscarriage of justice occurs in an extraordinary case where a constitutional violation has probably resulted in a conviction of someone who is actually innocent. "Actual Innocence" means factual innocence, not merely insufficiency. To meet this standard, a petitioner must show a reasonable likelihood of acquittal absent the constitutional error.

Schlup. 513. U.S. At. 327.

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:

1. Ashlie Rich - District Attorney
2. Travis W. Grant - Post conviction proceeding
2. Callie V. Granada - Senior U.S. District Judge
3. Carol A. Wright - Alabama State Bar
4. Catherine Kennedy - D.H.R. Investigator
5. Charles R. Wilson - United States Circuit Judge
6. Clarissa Timmes - Mother of Alleged Victims
7. Cynthia P. Raulston - Ethics Commission Filed Complaint
8. Gary Lamont Knight - Step Father of Alleged Victims
9. James D. Sears - Trial Preliminary, Plea, and Sentencing Att.
10. Jefferson S. Dunn - Commissions
11. Johnathan B. Mabry - on Appeal
12. Katherine P. Nelson - U.S. Magistrate Judge
13. Kenya R. Brown - U.S. State Attorney Filed Complaint
14. Laurie C. Blazer - Alabama State Bar Fund Filed Complaint
15. Mike Shavers - Detective
16. N. B. Patterson - Prosecutor
17. Rick P. Stout - Trial Judge
18. Sanyete Timmes - Alleged Victim
19. Stephen E. Butler - First Assistant U.S. Attorney Filed complaint
20. Terri Pope - Alleged victim
21. T.L.

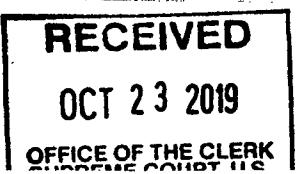


Table Of Contents

List of Parties-	I
Cover Page-	I
Questions Presented-	II 1,2,3,4
Table of contents-	III
Table of Authorities Cited-	IV
Opinions Below-	1
Jurisdiction-	2
constitutional and statutory Provisions involved-	3,4
Statement of the case-	5-9
Reasons for Granting the writ-	10-12
Conclusion-	13
Proof of Service-	14
Appendix, A Dated Filed: 5-29-2019 court order Denied	
Altering, falsifying and withholding of Documents	15
1. State's motion to introduce evidence under rule 404 (B)	
2. State's amended motion to introduce evidence under rule 404 (B)	
3. The marriage index Document	
4. Court of criminal appeal: CR-10-1810- Pg.4	
5. Exhibit, 8 pg. 1 and 2 on James D. Sears	
6. Exhibit, 15 one pg. on Travis W. Grant	
7. Exhibit, 20 one pg. on James D. Sears	
8. Exhibit, 27 pg. 1 and 2 on Thomas Haas	
9. Exhibit, 23, 24, 25 and 26 are correct copies	
10. Document 23 on Thomas Haas is not a correct copy	
11. An incorrect filing fee of \$1,040.00	

Table Of Authorities Cited

Cases

Pages Number

Williams v. Taylor, 592. US. 362. 404-05-412- 13. 120 Sct. 1495. 146 L. Ed. 2d 389 (2000)	1. II
Williams, 529. US. At. 404-06; Bell v. Cone, 535- US. 685. 694. 122 S. Ct. 1843. 152 L. Ed. 2d. 914 (2002)	1. II
Reed v. State, 748. So. 2d. 231. 236 (Ala. Crim. App. 1999)	2. II
Murphy v. Carrion, 477. US. 478. 488. 1065. Ct. 2639. 91 L. Ed. 2d. 397 (1986)	3. II
Schlup v. Delo, 513. US. 298. 324-327. 115. S. Ct. 851. 130 L. Ed. 2d. 808 (1995)	3. II
Murphy, 477. US. At. 488; United States v. Frady, 456. US. 152. 170. 102. S. Ct. 1584. 71 L. Ed. 2d. 816 (1982)	3. II
Murphy, 477. US. At. 488	3. II
Schlup, 513. US. At. 327	3. II
Edwards v. Carpenter, 529. US. 446. 451. 120. S. Ct. 1587. 146. L. Ed. 2d. 518 (2000)	4. II
Schlup, 513. US. At. 327	4. II
<i>Id.</i> At. 28. U.S.C. 636 (B)(1)(B)	9.

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 Denied

reported at U.S. 11th Circuit Court ; 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 Denied

[] reported at District 2 Federal Habeus Corpus ; 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 Denied

reported at Alabama Supreme Court ; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Mobile 13th Circuit Court court appears at Appendix A to the petition and is Denied

[] 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 7-5-2018.

[] 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: 5-29-2019, and a copy of the order denying rehearing appears at Appendix A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including Denied no opinion (date) on June 15, 2012 (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 4-13-2012. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: 5-4-2012, 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 Denied (date) on 6-15-2012 (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Starting with diligents and there is extraordinary circumstance to grant relief based on the following grounds. In which the grounds are specific not conclusions and appear in the records, in which failure to address the issue will cause a fundamental miscarriage of justice. The State of Alabama is still in contempt of court order (Doc. 4 filed 11-29-2016). Trial counsel James D. Sears knew of the incompetant evidence in which was tantamount to legally insufficient irrelevant evidence, knew that the State of Alabama Prosecutor Nikki Patterson did not have subject matter jurisdiction over the exercise of jurisdiction over the offence charged. In which supplemented the fact finding procedure under color of authority of 404(B) with an amendment to the dates of the alledged offence, James D. Sears trial counsel also knew that both the alledged victims in this case had contracted Gonorrhea, knew the State of Alabama in their investigation withheld exculpatory evidence based on dispositive of fact and law the verdict based on material fallacies of irrelevant conclusions in which made the rule of evidence inapplicable in law and fact. Patterson aided to fabrication of evidence, The administrative law judge, Roderick P. Stott knew of structural defects that effect the subject matter of the offence and charging statutes known lack of authority. The U.S. magistrate has authority to conduct evidentiary hearing. *Id.* AT 28 U.S.C. 636(B)(1)(B). Also error because there is still factual dispute in law and fact based on state and federal relationship.

Because the evidence withheld was fundamental going to the verdict. *Beggarly* 524 U.S. AT 47 *Hazel Atlas Glass*, 322 U.S. AT 245 *Weese* 98 F.3d. AT 552-53 misconduct as the fabrication of evidence by which attorneys is implicated, in which will constitute fraud on the court. *Hill v. United States*, 368 U.S. 424, 428, (1962). Test of fundamental defect evaluating statutory violations under both §§ 2254 and 2255 add there lack of jurisdiction of the convicting court, federal constitution violations, miscarriage of justice and denial of rudimentary demands fair procedure. Applying *Schulp* 513, U.S. AT 324 *Id.* AT 327-328. And applying what a reasonable instructed juror's would do 513. U.S. AT 329 applying Supplimented record applying factual innocence, not mere legal insufficiency. The victims as witnesses against the accused was fabricated and did not have giving effect to the values underlying the confrontation clause. Twenty fifth annual review of criminal procedure- preface: Sixth amendment first principles 84 *Geo. L.J.* 641 (1996). Also the confrontation clause Hearsay rule- The state of the relationship 72 *Minn. L. Rev.* 523, 543-545 (1988). AT. 726 n.10 *Id.* AT. 104 AT. 696 AT. 216 e.g. Analyzed as a vehicle for addressing statements created with governmental participation *Margaret A. Berger*, the DE constitutionalization of the confrontation clause, a prosecutorial restraint model 76, *Minn. L. Rev.* 557 (1992). There was no corroborating evidence, no D.N.A, medical records withheld contrary to the material fact, even the marriage fabricated. The declarants trial testimony could not be established over the offence based on any corroborating evidence.

Statement Of The Case

In Rule 32 and federal Habeas corpus Petition

The trial counselor failed to challenge duras Barbara Edwards who was the petitioner's Social worker during voir dire examination for failing to respond or answer; (Petitioner's exhibit 1, B-40, exhibit 2, B-43 and exhibit 3, B-46-47). The trial counselor failed to call witnesses to the stand in petitioner's behalf as well as hostile witnesses. The following witnesses were available to testify at the petitioner's trial: Casinetta Curry, Cynthia Williams, Sharon Matthews, Steve Mccarrol, Roslyn Pope, and Andrew Winston. That the alleged victim Terri Pope told witnesses that her father never touched her and the trial counselor refused to use them; (petitioner exhibits 5, 6, 7 and 9-affidavits). The only witness called by trial counselor was Michele Nelson, who testified that the alleged victim Terri Pope told her that her father never touched her. (petitioner's exhibit 4 B-148-156). There was a number of witnesses available at trial willing to give relevant testimony. Trial counselor knew that the two victim's mother had manipulated them into testifying against the petitioner, the mother should have been cross examined but the trial counselor failed to do so; (petitioner's exhibit 8 memorandum James D. Sears) The mother initially notified authorities that both daughters had been allegedly raped by the petitioner. The mother was somehow released from prison early in order to apply pressure on the two victims whom had been seen and interviewed by the counselors with the department of human resources, namely interviewed by counselor, Catherine Kennedy who made a written report of the interview. However, the trial counselor never subpoenaed the Dept. of human resources counselor to court, nor required the submission of D.H.R. reports from the victim's interview or statements. There was no corroborating evidence to support the allegations made against the petitioner. There was also failure to subpoena the police officer that took the report. Both victims testified to being raped.