

ORIGINAL

20-5897

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

SEP 22 2020

OFFICE OF THE CLERK

DEMETRIUS WILLIAMS

VERSUS

(WARDEN) SANDY MCCAIN

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Demetrius P. Williams Jr. ✓
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1630 Prison Road
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QUESTIONS PRESENTED

- A. WHETHER THE FEDERAL DISTRICT COURT SHOULD NOT HAVE DENIED COA BASED ON THE SUBSTANTIAL SHOWING OF THE DENIAL OF THE SIXTH AMENDMENT GUARANTEES OF THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN THE CRIMINAL PROSECUTION BEFORE THE COURT?
- B. WHETHER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, PROVIDES IN PERTINENT PART THAT, "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS?"

The Petitioner Demetrius Williams, is a prisoner in the Louisiana Department of Public Safety and Corrections, presently housed at Raymond LaBorde Correctional Center, located in Cottonport, Louisiana.

The respondents are John F. Rowley, District Attorney, St. Bernard Parish, 1101 W. St. Bernard Hwy., Chalmette, LA 70043.

TABLE OF AUTHORITIES

CASES

Brady v. Maryland, 373 US 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)
Dugas v. Coplan, 428 F.3d 317, 332 (1st Cir. 2005);
Gideon v. Wainwright, 372 US 335, 342 (1963)
Johnson v. Zerbst; 304 US 458, 467, (1938)
Magana v. Hofbauer, 263 F.3d 542, 551 (6th Cir. 2001)
Martinez v. Ryan, 566 US 1 (2012)
North Carolina v. Alfred, 400 US 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)
Padilla v. Ky., 130 S. Ct. 1473, 1480-81 (2010)
Romilla v. Beard, 545 US 374, 390-93 (2005)
State ex rel. Glover v. State, 660 So. 2d 1189 (La. 1995)
State v. Calhoun, 96-786 (La. 5-20-97), 697 So. 2d 909, 914
Trevino v. Thaler, 569 US 413 (2013)
Yarborough v. Gentry, 540 US 1, 5 (2003)

STATUTE

28 USC § 2253(C)(2)
28 USC § 2254
1950 La. R.S. 14:42(A)(4)
La. C.Cr.P. Art. 930.4
La. C.Cr.P. Art. 930.8(A)(1)

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. 6
U.S. Const. Amend. 14
Article 1, Section 13 of Louisiana Constitution of 1974

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OCTOBER TERM, 2020

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
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Decisions Below

The decision of the United States Court of Appeals for the Fifth Circuit is an unreported judgment issued as the mandate dismissing the appeal for want of jurisdiction on July 17, 2020. it is cited in the table as No. 20-30384, Demetrius Williams v. Sandy McCain, Warden, et al., USDC No. 2:19-Coronavirus-11974, and a copy of the Clerk's letter, judgment, and order is attached as Appendix A this petition (A-1). The judgment approving the Chief U.S. Magistrate, denial of Court of Appeal Certificate of Appealability, and order denying the Writ of Habeas Corpus filed pursuant to 28 USC § 2254 as time-barred, of the U.S. District Court, for the Eastern District of Louisiana is also not report. A Copy is attached as Appendix B to this petition (A-2).

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fifth Circuit was entered July 17, 2020 and August 13, 2020. Jurisdiction is conferred on the Supreme Court by 28 USC, Rule 10 and statutory provisions involved.

This case involves Amendments VI to the United States Constitution, which provide:

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 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.

The Amendment is enforced by Amendment 14, Section 1, to the United States Constitution, which provides:

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.

STATEMENT OF THE CASE

The Petitioner's petition alleged that on March 25, 2009, Petitioner was charged with five separate counts of Aggravated Rape, in violation of 1950 La. R.S. 14:42(A)(4), by five separate bills of indictment bearing case numbers: 337-899, 337-900, 337-901, and 336-746/7 were sealed and are unavailable. On March 31, 2009, these cases were consolidated with case number 336-746/7.

On October 6, 2009, being unable through defense investigation or state prosecutor's discovery, to obtain material exculpatory evidence that would show that Petitioner was in fact

incarcerated at the time of the alleged offenses, Petitioner pled guilty in case number 337-901, to the amended charge of Attempted Aggravated Rape. (See attached St. Bernard Parish Sheriff's Office Criminal Records Division Letter of Incarceration, and Plaquemines Parish Detention Center Records/ Classification) In light of this plea, the charges in cases 337-899, 337-900 and 336-746/7 were dismissed by the State. On that same date, Petitioner was sentenced to twenty-four (24) years without benefits of probation, parole or suspension of sentence, to run day to day flat-calculation without diminution of sentence.

On September 22, Petitioner filed an Application for Post Conviction Relief that he was denied his constitutional rights under the due process clause of the Fourteenth Amendment of the United States Constitution and his right to the assistance of counsel under the Sixth Amendment of the United States Constitution and under article 1, section 13 of the Louisiana Constitution of 1974. The basis of Petitioner's claim was that the State failed to provide through discovery the material exculpatory evidence that would show that Petitioner was incarcerated at the time of the alleged offenses, and his defense counsel failed to obtain or object to absence of this evidence, prior to trial or prior to advising Petitioner to plead guilty, and that when he finally did receive the evidence, he was already pled guilty in case number 337-901, which revealed that it was impossible for Petitioner to have committed the offense for which he was indicted as he was incarcerated at the time of the alleged offenses.

On September 11, 2013, the State trial court denied Petitioner's application for post conviction relief. Petitioner timely filed a writ with the Fourth Circuit Court of Appeal, which was denied on May 8, 2014. Petitioner thereafter timely filed with the Louisiana Supreme Court, which was also denied, on March 27, 2015.

It was not until after the September 22, 2011 filing of Petitioner's first post conviction that he was able to obtain the necessary material exculpatory evidence, the nature of St. Bernard Parish Sheriff's Office Criminal Records Division Letter of Incarceration and Plaquemines Parish Detention Center Records/Classification documents, that the State of Louisiana failed to provide defense through discovery request, specifically, affidavit and incarceration records revealing that it was defective indictments because Petitioner was incarcerated at the time of the alleged offense.

On August 30, 2016, Petitioner filed his instant second application for post conviction within two years of discovery of the material evidence, pursuant to the exception under La. C.Cr.P. Art. 930.8(A)(1), asserting that his guilty plea was unconstitutional because he would be subject to the sex offender registration requirements, where evidence not provided through defense discovery request suggested it was impossible for Petitioner to have committed the offenses for which he was indicated, as he was incarcerated at the time of the alleged offense.

On November 29, 2016, the court appointed attorney, Michael C. Ginart to represent Petitioner and motions were subsequently heard on January 24, 2017. It was not until March 31, 2017, the State filed an objection to Petitioner's August 30, 2016, pro se application for post conviction relief on procedural grounds. Arguments were heard regarding the State's procedural objections on April 18, 2017. On May 23, 2017, the District Court, being influenced by former judge Perry Nicosia, and presently head District Attorney, who made the presiding Judge over the hearing, aware that the young lady (Petitioner's former wife), grew up right behind his (Judge Perry Nicosia) house, is the one who filed these charges on the Petitioner and he had to stay locked up. Additionally, when the Petitioner went to court for hearing in 2012, Petitioner's former wife told the presiding judge that Petitioner was contacting her by mail, until Petitioner

showed the Judge that his former wife started writing him first, the presiding Judge became outraged still and wanted to give Petitioner more time, and had to recuse himself off the case because of his biasness and potential prejudice, that is when Petitioner's former wife neighbor Judge Nicosia took over presiding over the case. Petitioner's former wife waited three (3) years and started writing, sending money, pictures, and her phone number to have Petitioner call her. All of these me-mails are in the care and custody of RLCC Warden Bordelon, to which the Petitioner is at this writing requesting. On this date, May 23, 2017, the trial court after considering the totalities of the circumstances, denied the State's procedural objection and granted an evidentiary hearing on the merits of Petitioner's August 30, 2016 application. The State objected to the ruling of the trial district court and noticed its intention to seek supervisory writs. The State was granted a stay of the proceedings and thirty (30) days to file an application for writs..

On July 25, 2017, the Louisiana Fourth Circuit Court of Appeal improperly relied on statutory grounds not properly raised, and indeed not raised at all by the State District Attorney, in reversing the State trial court, and denied Petitioner's post conviction application as untimely under La. C.Cr.P. Art. 930.8.

Both Petitioner and his counsel sought review of the appellate court's ruling in the Louisiana Supreme Court. On October 29, 2018, the Court denied the counsel-filed writ application for seeking untimely review under La. C.Cr.P. Art. 930.8 and State ex rel. Glover v. State, 660 So. 2d 1189 (La. 1995) and repetitive under La. C.Cr.P. Art. 930.4. That same day, the court denied Petitioner's pro se writ application also.

On August 21, 2019, after correction of certain deficiencies, the clerk of the U.S. district court, Eastern District of Louisiana, filed Petitioner's federal petition for habeas corpus relief in

which he asserts that his guilty plea was obtained in violation of his constitutional rights where the State withheld evidence of his innocent and his counsel was negligent. The State filed a response in opposition asserting that Petitioner's federal petition should be dismissed as untimely filed and otherwise for failure to state a cognizable federal claim.

On January 20, 2020, the Honorable Karen Wells Roby, Chief U.S. Magistrate Judge, issued recommendation that Petitioner's federal Writ of Habeas Corpus filed pursuant to 28 USC § 2254 be dismissed with prejudice as time-barred. Petitioner filed timely objection to Magistrate's Report and Recommendation on March 2, 2020.

On March 30, 2020, the court approved the report and recommendation of the Chief U.S. Magistrate Judge and adopted it as its opinion in the matter, and ordered that Petitioner's petition for issuance of a writ of habeas corpus be dismissed with prejudice as time-barred.

On March 30, 2020, the court issued judgment in favor of the respondents, and against the Petitioner, dismissing with prejudice Petitioner's petition for issuance of a Writ of Habeas Corpus pursuant to 28 USC § 2254 as time-barred, and issued an order that "a Certificate of Appealability shall not be issued" finding Petitioner failed to make a substantial showing of the denial of a constitutional right.

BASIS FOR FEDERAL DISTRICT JUDGE

Review of the instant writ of certiorari is not a matter of right, but of judicial discretion. See Rule 10, of Supreme Court of the United States Rules, Adopted September 27, 2017, effective November 13, 2017. This case raises a question of not only of interpretation of Due Process Clause protection and denial of the right to counsel, resulting from denial of effective assistance of counsel guaranteed by the 6th and 14th Amendment, is of such imperative public importance as to justify deviation from normal appellate or review practices and to require immediate determination in this court.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

Due process requires the prosecution to disclose evidence favorable to an accused upon request when such evidence is material to guilt or punishment. Brady v. Maryland, 373 US 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). The term “Brady violation” is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence. The three components of a true Brady claim are met by this Petitioner: (1) the evidence at issue was, and is, favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence was suppressed by the State, either willfully or inadvertently, and (3) prejudice have ensued, resulting in Petitioner having to enter pleas of guilty, subject to constitutionality excessive sentence, as a result of counsel being placed in position of rendering ineffective assistance of counsel, in violation of the Sixth Amendment.

Only after Petitioner was convicted did his attorney begin to investigate, and concede in his testimony that Louisiana law did not require that the exact dates of the rapes be included in the indictment for this type of charge, however, even if the State amended the indictment before trial to remove the date, counsel claimed after advising Petitioner to plead guilty, he planned to use the incarceration records to show that Petitioner “was actually incarcerated during the period of time that the bill of information indicated that he committed these criminal acts.” Counsel simply refused to present the available evidence or argument at a trial, but instead, advised Petitioner to plead guilty. Martinez v. Ryan, 566 US 1 (2012) and Trevino v. Thaler, 569 US 413 (2013).

The dismissal of Petitioner’s habeas petition on procedural grounds did not bar issuance of a COA. When the district court denied the instant habeas petition on procedural grounds without reaching the underlying constitutional claim, a COA should have been issued if the Petitioner showed that: (1) “jurists of reason would find it debatable whether the petition states a valid

claim of the denial of a constitutional right;” and (2) “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

IMPORTANCE OF THE QUESTION PRESENTED

This case presents fundamental questions of the right to have the assistance of counsel for his defense, the right to effective assistance of counsel in criminal prosecutions, and guilty plea obtained in violation of constitutional rights where the state withheld evidence of Petitioner's innocent due to counsel's ineffectiveness, resulting in “a fundamental miscarriage of justice.” Gideon v. Wainwright, 372 US 335, 342 (1963); Johnson v. Zerbst; 304 US 458, 467, (1938); Yarborough v. Gentry, 540 US 1, 5 (2003)(per curiam); Padilla v. Ky., 130 S. Ct. 1473, 1480-81 (2010).

Petitioner's counsel ineffectiveness was very much at issue initially, due to counsel's failure to conduct any independent investigation of possible defenses based on Petitioner's statement of the facts or to object on the record to the circumstances under which the trial judge and prosecutor created obstructions to the defense from physically possessing exculpatory evidence supportive of Petitioner's facts and defense, and failure to inform Petitioner of sex registration requirements as required by La. R.S. 15:543(A). Dugas v. Coplan, 428 F.3d 317, 332 (1st Cir. 2005); Romilla v. Beard, 545 US 374, 390-93 (2005); Magana v. Hofbauer, 263 F.3d 542, 551 (6th Cir. 2001).

Had the prosecutor provide the defense with the available exculpatory evidence, and Petitioner been informed of mandatory sex registration for the rest of his life, by prosecution, the trial judge, or defense counsel, Petitioner would never have entered a guilty plea. State v. Calhoun, 96-786 (La. 5-20-97), 697 So. 2d 909, 914.

The Fourteenth Amendment to the U.S. Constitution also provides, in pertinent part, “nor shall any state deprive any person of life, liberty, law, nor deny to any person within its jurisdiction the equal protection of the laws.”

Material evidence in the nature of t. Bernard Parish Sheriff’s Office Criminal Records Division Letter of Incarceration, and Plaquemines Parish Detention Center Records/ Classification Detention and Transfer Information, existed showing the Petitioner’s physical incarceration in state custody from May 27, 1999 until March 29, 2001, and that this evidence was unobtainable due to state prosecution’s interference and actions, until after Petitioner’s conviction on October 6, 2009, which evidence conclusively establishes Petitioner’s actual innocent, which acts as a catalyst to bring him within that “narrow class of cases” in which the refusal of the courts below to hear Petitioner’s underlying constitutional claim that the State’s withholding of exculpatory evidence in violation of Brady vitiated the voluntariness of Petitioner’s pleas entered, resulting in his counsel being seriously ineffective, subjecting Petitioner to fundamental miscarriage of justice.

Federal habeas courts sit to ensure that individuals are not imprisoned in violation of the U.S. Constitution, and not to review questions of guilt or innocent. Petitioner’s otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if, as in this case, Petitioner made a proper showing of actual innocent. This rule, or fundamental miscarriage of justice exception, is grounded interest he “equitable discretion” of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons. This body of habeas jurisprudence makes clear that a claim of “actual innocence” is not itself a constitutional claim, but instead a gateway through which a

habeas Petitioner must pass to have, as in this case, his otherwise barred constitutional claim considered on the merits.

In this case, the State's withholding combined with judicial obstructions, prevented Petitioner from obtaining exculpatory evidence verifying his incarceration at the time of the crimes commission, vitiated the voluntariness of Petitioner's pleas. Brady v. Maryland, 373 US 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); North Carolina v. Alfred, 400 US 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.



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- A. Letter with Order from U.S. Court of Appeals, dated August 13, 2020
- B. Letter asking for clarification, dated July 27, 2020.
- C. Letter with judgment as mandate, U.S. Court of Appeal, dated July 17, 2020
- D. Judgment – U.S. District Court – Eastern District of Louisiana, dated March 30, 2020.
- E. Order, U.S. District Court – Eastern District of Louisiana, dated March 30, 2020.
- F. Certificate of Appealability denial, dated March 30, 2020, U.S. District Court, Eastern District of Louisiana.
- G. Exculpatory Evidence obtained after conviction St. Bernard Parish Sheriff's Office Criminal Records Division Letter of Incarceration, and Plaquemines Parish Detention Center Records/ Classification, Detention Records
- H. Report and recommendation, United States District Court, Eastern District of Louisiana, dated January 23, 2020