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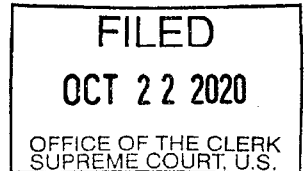
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C.

FINNIS DAVIS II — PETITIONER
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR the Fifth CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Finnis Davis II
(Your Name)

2101 FM 369 North
(Address)

Iowa Park, Texas 76367
(City, State, Zip Code)

(940) 855-7477
(Phone Number)

QUESTION(S) PRESENTED

Mr. DAVIS was convicted with a penalcode 19.03(a)(7)(A) Attempted Capital Murder. Mr. DAVIS was convicted on testimony evidence only of shooting two people and Mr. DAVIS was not convicted of shooting at them. Mr. DAVIS contends he did not shoot Mr. Roney and the Medical records will prove Mr. Roney injury was not from being shot with a gun.

Fifth circuit relied upon the state's court's statement of the facts on direct appeal but significantly misstated even that slanted version of the fact. The case thus presents the following questions.

- A). Did the statute change in Oct 24 2013 For Tex penalcode 19.01 19.02(b) 19.03 a)(7)(A); because Second court of Appeal's said in Mr. DAVIS insufficient evidence claim that the state was not required to prove that Mr. DAVIS had to shoot Mr. Roney. But in April 12, 2012 Mr. DAVIS statute indictment and jury charge are the same shooting people is the basic element of the crime of which Mr. DAVIS is convicted of. 19.03 a)(7)(A). If it did change in Oct 24, 2013 was it retroactive to Mr. DAVIS case?
- B). Did the Fifth circuit err in deferring to the state court finding that Mr. DAVIS was not prejudiced by his trial counsel's failure to request the medical records of Oscar-Roney basically counsel's failure to investigate the key evidence of Oscar-Roney-Gun-shot wound?
- C). Did Fifth circuit err in deferring to the state court finding that Mr. DAVIS was not prejudiced by his trial counsel's failure to explain the ramifications of taking a plea-deal?

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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APPENDIX A Decision of the Fifth circuit Court of Appeals

APPENDIX B Memorandum and order of the District court

APPENDIX C Due to covid-19 A motion for leave to file petition rehearing out of time was granted. It is further order that the petition for rehearing is Denied May 26, 2020.

APPENDIX D (Tex crim. App. court) Denied without written order the State application for writ of habeas corpus.

APPENDIX E Court of Appeals Second District of Texas issued opinion and judgment on Oct 24, 2013.

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Baylor v. Estelle 94 F3d 1321 (9 th Cir 1988)	13
Cheung v. Maddock 32 F'supp 2d 1150 (N.D. Cal 1998)	13
Fiore v. White 121 S.Ct 712	3, 11, 12
In re Winship 90 S.Ct 1068 (1970)	3, 4, 11
Jackson 99 S.Ct 2781	3, 12
Reedy v. State 214 S.W.3d 567 (Tex App Austin 2006)	11
Richey v. Mitchell 395 F3d 660 (6 th Cir 2005)	11
Sims v. Livesay 970 F2d 1575 (6 th Cir 1992)	3
Strickland v. Washington 446 US 687 (1984)	3
Missouri v. Frye 566 US 2012	15
Tucker v. Prelesnik 181 F3d 747 (9 th Cir)	8

STATUTES AND RULES

28 U.S.C. § 1254

28 U.S.C. § 2254

Tex. Penal code 19.03 a)(7)(A).

OTHER Jurisdiction pursuant to rule 10. Consideration governing review on writ of certiorari where there is conflict in Court of Appeals Decisions 28 U.S.C. § 21.01(e).

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 _____; 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

☒ reported at ecf:ind:uscourts.gov/cgi-bin/DktRpt.p 268774; 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 D 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 Court of Appeals second District of Texas court appears at Appendix E 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 April 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: May 26, 2020, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including Due to Covid-19 (date) on 150 days (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 12/23/2015. A copy of that decision appears at Appendix D.

[] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fiore v. White 121 S.Ct. 712 Fourteenth Amendment Forbids a State to convict a person of a crime without proving every elements of that crime beyond a reasonable doubt. See Jackson 99 S.Ct. 2781. In re Winship 90 S.Ct. 1068 (1970).

Sims v. Livesay 970 F.2d 1575 (6th Cir 1992) It is the duty of the lawyer to conduct a prompt investigation of the circumstance of the case and to explore all venues leading of facts to the merits of the case and the penalty in the event of conviction the investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities hospital record. The duty to investigate exists regardless of the accused's admission or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty or plead innocences. For a fair trial and a effective asst of counsel guaranteed by the Sixth Amendment.

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 where in they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State nor shall any state deprive any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner's Finnis DAVIS II was charged indictment with the offense of Attempted Capital Murder. Penalcode 19.03 a)(1)(b) Under cause NO. 1199412-D. Petitioner request this court to review the constitutional claims, and make a determination on whether the Appeals Court's decision was in error.

Mr. DAVIS was convicted of shooting two people i.e. (Mr Roney) and (Ms Taylor) Therefore at trial the state was under the In re Winship standard requirement had legal and constitutional obligation under the Due-process clause Amendment to prove that essential element alleged that not one but two victims alleged in the indictment Ms Taylor and Mr Roney were shot by DAVIS as alleged in the indictment with Deadly weapon To-wit a Firearm's (CR Vol. 1 p 6).

However the record also contradicts that Mr. Roney injury being a gun-shot wound see (RR. Vol-5 p 394045); Mr. DAVIS contends he didn't (shoot Mr Roney). Mr. DAVIS also contends that this has been his factual disputed through-out his Appeal-process.

[First] In DAVIS insufficient evidence claim that the evidence is insufficient to prove that Mr. Roney that Roney was actually shot, and in fact during trial there was some conflicting statement made.

Mr. Roney testified he was shot behind his left ear-which caused him to lose his memory of events of that night see

STATEMENT OF THE CASE

see (RA 4 p 149; 226-227). The paramedic Tobias Theisen testified as stated It was very odd to me in meaning that he can't go with this as gunshot wound I don't ~~know~~ ~~if~~ if this is done with a ice pick or a stick or a piece of glass from broken window see (RA vol-5 p 394045).

In the Court conclusion at page said the state was not required to prove that petitioner was successful in his attempt to mortally wound Roney.

The Second Court of Appeals in its direct Appeal opinion is suggesting that the state court did not have to prove that Oscar Roney was shot by a firearm they are suggesting that it wasn't Element the state had to prove.

The reading of the 2nd court of Appeals conclusion reveals that Roney was not shot by a firearms beyond a reasonable doubt. For the following factual reasons: no-evidence adduced at trial from the state's witness never-presented any factual medical report or no-Doctor's testified to sustain the states burden of proof proving victim Roney was by a Firearm beyond a reasonable doubt see Exhibit (F) Medical record of Oscar Roney were not exhibits in the petitioner trial.

Petitioner's disagree with the finding of the court of Appeal and now seeks review of this court.

STATEMENT OF THE CASE

[Second] Trial counsel was ineffective for not requesting the Medical records of Oscar Poney basically counsel Failure to investigate the Key evidence. The post conviction denied relief on this claim. The court concluded that petitioner could never meet the performance prong of the Strickland v. Washington 466 U.S. 668-687-88 (1984) that court found that Mr Davis had not shown prejudice.

Trial counsel said he believed that he did have access to those records petitioner's contends it's a proven fact that trial counsel haven't seen those records from the Trial counsel invoice summary-sheets of Mr. Davis case nothing mentions about Oscar Poney report in his case summary Mr. Harris never stated that he went to the hospital to inquire the seriousness of his injury.

The respondent and District court concluded that the record and Poney's wound were consistent with other evidence presented at trial SHCR-223-24

The court made unreasonable determination when they concluded that one of police officer's who investigated the crime scene suggested that Mr. Poney was possibly hit by a bullet that had ricocheted or fragmented from hitting the driver's-side door-post this is the

STATEMENT OF THE CASE

testimony that the District court is relying to be consistent with evidence that Oscar Roney was shot by a firearms. (First) all this is just speculative evidence and a suggested this is not factual evidence [Second] of all the 2nd court of Appeals made unreasonable determination on who really said this as it was actually Mr. Davis trial counsel (Mr. Harris) that derived that theory while - examining the crime scene officer Christopher Bain see (RR. Vol-4p 226: 19-25) and (RR Vol-4p 227: 1-6) This will prove petitioner trial counsel came-up with this theory and suggested. This was deficient performance on part of petitioner trial counsel. Also this is two (2) different scenarios because if a bullet that had ricocheted and hit Mr. Roney he would have a (graze-wound) but he have some kinda of puncture wound so that's no-way that scenario about a bullet had ricocheted and hit him because he would be grazed by a bullet. Mr. Roney said he pulled-out little piece bullet fragment from hitting the driver's-side doorpost no bullet fragment was not found no-where in car or ground the crime scene. This is a case were two people ~~not~~ not one person was supposed to be shot

STATEMENT OF THE CASE

with a [GUN] and trial counsel did not have the Medical report submitted in trial for testimony to be challenged so the trial counsel would have known about the seriousness of their injury; instead of the speculation and suggested opinion he did.

Therefore under Strickland v. Washington 466 U.S. 668-88 (1984) also see In Tucker v. Prelesnik 181 F3d 747 (9th Cir)

Failure to obtain Medical records casting serious doubt on the reliability of the testimony of the prosecution's sole witness and his failure to obtain and use earlier contradictory statements of the witness concerning the attack was an error so serious as to have deprived (Mr Tucker) of a fair trial as guaranteed by the sixth Amendment.

The state relied on their own-witness testimony to convicted petitioner (Davis) of his Attempted Capital Murder 1st Degree (A) Charge instead of any-factual evidence. The Appeal court felt like the physical evidence is lying about what was found at the crime scene.

(Third) ground: Trial counsel was (IAC) Failure to explain the ramifications of taking a plea-deal and allowed the state's original plea to lapse which had a fix expiration date attached to state's bargain offer.

STATEMENT OF THE CASE

Appeals court concluded that trial counsel try discussing a possible offer. Because petitioner became argumentative concluded petitioner was not prejudiced.

Petitioner contends counsel can-not prove that he discuss a plea-offer. A matter of Fact petitioner's contends he can prove in fact that the counsel lied about any plea-offer or even telling petitioner's (Davis) about the evidence in his own case from the trial record see (AA. Vol. 2 pp 36 line 1-3) pp 46-46) petitioner contends counsel allowed the state's original plea to lapse for there was a fixed expiration date February 6, 2012. Check the record from the plea-cut off dated and see if there's a signature from the petitioner on that date of February 6, 2012. Nothing is in the record of such rejection of that day, and that will prove counsel failed to inform petitioner that it was a cut off date.

REASONS FOR GRANTING THE PETITION

Petitioner's Finnis Davis II, shows this court that the Court of Appeals decision on the facts of his claims is in violation of well-established Supreme court laws, as well as Federal laws. He now seeks review on his writ of certiorari which require this court to decide whether the (3) claims was unreasonable decided and in violation of his Due-process rights to a full and fair trial in state court, by showing following facts in support thereof:

The court of Appeals memorandum constitutes an unreasonable determination of the facts for the following reasons: Elements alleged in the indictment and Jury Charge conflict - hearing Multiple gun shots established the element of intent to sustain petitioner (Davis) judgment and conviction. Prosecutor Vassar telling jury - voir dire elements the state need to prove in petitioner (Davis) attempted Capital Murder two people has to be (shot) by the petitioner. Also prosecutor gave the jury two examples of the attempted Capital Murder Charge. This is from the trial record see (RR.Vol. 2 p 69 line 23-25) see (RR.Vol. 2 p 70:1-25 p 71-2).

REASONS FOR GRANTING THE PETITION

The element of intent the court relied on is not charge or alleged in the indictment or jury charge which thwart - public policy) legislators intent of enacting the statute allowing attempted Capital Murder and misrepresent of the "supreme court" of the United States precedent of proving every element alleged and charged in an indictment beyond a reasonable doubt to sustain a conviction fails under scrutiny. See Interrelationship 90 S.2d 1068, 107A (1970) followed by the state court Reedy v. State 214 S.W.3d 567 (Tex App Austin 2006). There was legally insufficient to show that defendant used a hatchet to inflict death upon victim, as required for conviction as charged seen in Reedy v. State that was necessary fact to be proven - beyond reasonable doubt. See federal court Richey v. Mitchell 396 F3d 668 (2nd Cir 2005) subsection - D of the statute Richey could not have constitutionally convicted of aggravated Felony Murder because the state did not prove Richey's specific intent to kill the victim. In the "supreme court" Fiore v. White 121 S.2d 712 (2001) Due-process-clause of the fourteenth Amendment forbids a state to convict a person of crime with-out proving every-element of that crime beyond a reasonable

REASONS FOR GRANTING THE PETITION

2

doubt see Jackson 99 S.2d 2781 (1979) In Fiore v. White

Failure to possess a permit is the basic element of the crime of which Fiore was convicted.

Now in the instance case before this Honorable court, the element of shooting at two persons Multiple time to commit the offense of Capital Murder is not alleged. The element of shooting one person and shooting at another person to commit the offense of Capital Murder is neither alleged to Facilitate the Appellate court's opinion of intent (CA. Vol-1 p6).

In the petitioner's case, shooting two people is the basic elements of the crime of which petitioner was convicted.

Thus for the court of Appeals to turn a blind-eye to the statutory law of the petitioner Attempted Capital Murder charge a)(7)(A).

The petitioner is asking the following proposed questions or formulate its own that are within the same line of legal questions that once impartially determined did the court of Appeals use the correct legal standards, principles statutory law of Texas, and of the Supreme court of the United States.

(Second) Trial counsel Failure to investigate the key-evidence.

REASONS FOR GRANTING THE PETITION

Petitioner's indictment for shooting two people and Trial counsel said he believed that he did have access to Mr. Roney Medical records. Trial counsel did not even cross-examine the paramedic Tobias-Theisen who actually treated Oscar Roney injury nor did the Trial counsel subpoena the Doctor's who treated Oscar-Roney. There was no-factual evidence to corroborate what actually happened, all it is speculation and opinions and the theory trial counsel came-up with shows his deficient performance Trial counsel opinion harm prejudice the petitioner whole trial. In Baylor v. Estelle 94 F3d 1321 (9th Cir 1998) a criminalist report testing certain evidence tended to eliminate the defendant as suspect yet the trial counsel never followed-up on the information in the report nor did counsel have another test conducted. The 9th circuit concluded that the trial counsel's performance was completely inadequate id at 1324. Also In Cheung v. Maddock 32 F Supp 2d 1156 (N.D cal 1998) Trial counsel never both to obtain or review Haskins Medical records in the first. Defense counsel's Failure to investigate shooting victims medical records amount to incompetence and resulted in prejudice to defendant and thus constituted (IAC)

REASONS FOR GRANTING THE PETITION

Under Strickland a reasonable attorney would have known such record could relate directly to many aspects of the case. Oscar-Roney were treated for his wound by EMT taken to the hospital no-gun was recovered from the scene and at trial no medical report or expert were presented for the fact finders consideration proving Mr Roney injury from being shot with a gun.

Moreover the allegations against petitioner (Davis) included great-bodily injury. A reasonable attorney would have realized that Oscar-Roney hospital records would be relevant to these allegations. In sum petitioner attorney should have at a minimum inquired into any medical record at the hospital

(Third) Trial counsel was (IAG) failure to explain the ramifications of taking a plea-deal, and allowed the states original plea to lapse which had a fix expiration date attached to states bargain offer.

Petitioner contends counsel can-not prove that he discuss a plea-offer. A matter of fact petitioners contends he can prove in that the counsel lied about discussing any plea-offer or even telling petitioners about the evidence in his own case from the trial record see (RA.v01.app.36 line 1-3) (pp 46-46)

Petitioner contends counsel allowed the state's original plea to lapse, for there was a Fixed expiration date February 6, 2012. In the Supreme-court Missouri v. Frye 566 U.S. 2012. Now holds that as a general rule defense counsel has duty communicate formal offer's and must be on record from the prosecution to the accept terms and conditions that may be favorable to the accused any exception to that rule need not be explored. Petitioner counsel (IAC) for letting to plea-offer expire because the record will reflect from petitioner (DAVIS) plea-cut-off dated February 6, 2012.

CONCLUSION

These cases illustrate the fact that the Fifth Circuit court of Appeals is out of step with this court and with other circuits in its consideration of the supreme court and Federal laws. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy DAVIS II

Date: 10-20-2020