

NO. 20-7692

ORIGINAL

Supreme Court, U.S.
FILED

MAR 23 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD RAY VIOLETT - PETITIONER

vs.

Judge JOHN R. GRISE - Warren Circuit Court - RESPONDENTS

ON PETITION FOR A WRIT OF CRETIORARI TO

KENTUCKY SUPREME COURT

Donald Ray Violett

3001 West Highway 146

LaGrange, Kentucky 40032

1-502-222-9441

QUESTION(S) PRESENTED

Based on new discovered evidence, can a State court convict and prison incarcerate Petitioner on dismissed and fabricated charges?

Can the State courts suspend Petitioner rights from seeking Habeas Corpus Relief When New Evidence Establishes Judgment Of Conviction is Void in initio and sentencing unlawful?

Did Petitioner Present Sufficient Evidence To State Courts

To Establish A Claim Of "Actual Innocence"

To Establish Grounds For Habeas Corpus Relief

Did The Commonwealth Attorney Violate Petitioner's Rights
By Using Government Intrusion To Attorney-Client Relationship
To Use Petitioner's Evidence To Fabricate Allegations

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

Donald Ray Violett
3001 West Highway 146
LaGrange, Kentucky 40032

Judge John R. Grise
Warren Circuit Court
1001 Center Street, Room 401
Bowling Green, Kentucky 42101

RELATED CASES

Donald Ray Violett v. John R. Grise - Warren Circuit Court - 2021-SC-00048 -
Kentucky Supreme Court [appendix] (unpublished)

Donald Ray Violett v. John R. Grise - Warren Circuit Court - 2021-CA-00075 -
Kentucky Court of Appeals [appendix] (unpublished)

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment of The United States Constitution

Eighth Amendment of The United States Constitution

Fourteenth Amendment of The United States Constitution

Section 17 of The Kentucky Constitution

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 state courts:

The opinion of the highest state court to review the merits appears at Appendix A and B to the petition and is

is unpublished

The opinion of the Kentucky Court of Appeals appears at Appendix D to the petition and is

is unpublished

JURISDICTION

The date on which the highest state court decided my case was March 3, 2021. A copy of that decision appears at APPENDIX B.

A timely motion for rehearing was thereafter denied on the following date: MARc H 16, 2021, and a copy of the order denying rehearing appears at Appendix A.

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

STATEMENT OF THE CASE

In April, 1991, the Bowling Green Police Department received information from a school teacher that Violett's 14 year old stepdaughter [Angela] told Violett supposedly had sexual intercourse with Angela. The Cabinet for Human Resources [Suzanne Pash] and the BGPD [police detective Eulin Carter] started a full investigation and Angela admitted her allegation was to try to get Violett leave his wife [her mother] so Angela could have sex with other men and Angela would not have to follow her mother's house rules. In May, 1991, the CHR and BGPD exonerated Violett with Angela signing statement her allegation was fabricated and Violett had never touched Angela or had sex with Angela.

June 22, 1992, the BGPD received a complaint that Violett allegedly had sexual intercourse with Angela on June 16, 1992, in her bedroom, while she was getting ready for school. Eulin Carter interviewed Angela and Angela refused to give a sworn written or recorded statement, other than alleged Violett had sex with her "one time in the past" on June 16, 1992. Carter took Angela to the Bowling Green Medical Center for a rape kit exam and collected from Violett samples of his saliva and pubic hairs, including the panties Angela wore on June 16, 1992. Within the same day, Carter filed another sworn affidavit, this time claiming Violett allegedly had sexual intercourse with Angela "six to ten times in the past." On June 24, 1992, Warren District Court [Judge JoAnn Coleman] conducted a probable cause hearing, and based on Carter's testimony and sworn affidavit, Angela was placed in court ordered foster care with a family in Oakland Kentucky.

When Angela learn the forensic testing of the semen found in the panties could exonerate Violett, Angela wanted to recant. Carter took Angela out of the court ordered foster care home, in Oakland, and put Angela in another house, on Springhill Drive, in Bowling Green and, then assisted, induced, and approved for an 20 year old adult man have unlimited sexual intercourse with this 14 year girl to get Angela not to recant. Carter then withheld the forensic test results reports during the discovery phase in Violett's criminal case and destroyed the April – May 1991 paperwork that exonerated Violett.

On July 10, 1992, Violett's biological daughter [Alissa] was interviewed in the Commonwealth's Attorney office. Alissa gave a sworn written statement, that never mention rape or sodomy. The Commonwealth then went before the Warren County Grand Jury and Violett was indicted for allegedly committing 129 counts of 1st degree rape and 175 counts of 1st degree sodomy. On July 29, 1992, Warren Circuit Court [Judge Thomas R. Lewis] dismissed all but 17 counts of the indictment and then amended those remaining 17 counts to 1st degree sexual abuse. Multiple discovery orders were issued, but, the commonwealth never released the forensic test results or Carter's files.(Tr. Tape 1, 5/25/93, 9:04-9:44) Carter closed his investigation in March 1993 knowing Violett was only charged with 17 counts of 1st degree sexual abuse. The Commonwealth brought in a child psychologist, a Ms. Sartain-Smith, who coached the alleged victims how to give trial testimony.

A pre-trial KRE 412 ruling prevented Violett from introducing evidence of his innocence. The court record shows the Commonwealth had Angela look at "documents" to give a more specific date of when the alleged crimes happen to support the Commonwealth's Bill of Particulars allegations.(T.E. 55-57) Those documents were the letters Violett tried to introduce but, was denied. Those Bill of Particulars allegation dates were after the last date [May 22, 1992] listed in the indictment. Violett had to defend himself against uncharged allegations, listed in that Bill of Particulars, during his trial. RCr 7.26 requires the Commonwealth to release all documents the Commonwealth relied on to make those unfounded allegations in that Bill of Particular, which it did not release those "documents" which turned out to be the letters Violett attempted to introduce in his defense.

[Indictment No. 92-CR-532]

When Violett's jury trial started, May 25, 1993, the Commonwealth's open statement was it was his "beliefs" Violett committed an 123 counts of 1st degree rape, by forcible compulsion, and, 175 counts of 1st degree sodomy, by forcible compulsion, is why the grand jury indicted and charged Violett with so many counts and, the crimes started on January 20, 1989 and end on May 22, 1992 on the stepdaughter, not telling the jury Warren Circuit Court had dismissed all but 17 counts of the indictment and Warren Circuit Court had amended those remaining 17 counts to 1st degree sexual abuse.

What the Commonwealth did not tell the jury was, on July 29, 1992, Warren Circuit Court dismissed all but 17 counts of the indictment and, then Warren

Circuit Court amended the remaining 17 counts to 1st degree sexual abuse. Violett was never told the offenses had been dismissed to a lesser included offense of charges had been dismissed. What the Commonwealth also failed to tell the Commonwealth had Angela look at Violett's evidence [letters] to get dates to support the Commonwealth's Bill of Particulars allegations listed in its Bill of Particulars, but, the letters shows another adult man committed the heinous sex crimes on those dates.

During trial, the Commonwealth focused on just the Bill of Particulars dates. Angela's testimony alleged Violett committed the sex acts on those Bill of Particulars dates. Angela testified the first act occurred January 26, 1991 while Violett took her skating in back of a van behand a P.J. Plumbing Supply Store.. But, on cross-examination, Angela's testimony changed drastically. Angela admitted there was no P.J. Plumbing Supply Store. That her Mother and Violett told her to the skating rink and picked her up after her Mother and Violett went shopping. The pre-trial KRE 412 ruling prevented Violett from telling the jury Angela and a male friend got caught in the weeds at the skating rink in a sex act.

It was the same for the third listed date in the Bill of Particulars - on a Friday October 3, 1991 (changed to "Friday - October 4, 1991" during cross-examination). The Bill of Particulars alleged the sex act occurred right before Angela left to go on a school sponsored ROTC camping trip. On cross-examination, Angela confessed Violett had already left for work before she got out of bed; her Mother and brother took her to school to go on that trip and a teacher brought her home after the trip.

Again, the pre-trial KRE 412 ruling stopped Violett of putting on a defense the commonwealth had Angela look at the letters to get dates to support the Bill of Particulars and, Angela had sex with an adult man on that ROTC trip.

The Commonwealth's remaining Bill of Particulars dates alleged, that:

"The girl recalls specific dates of May 20, 1992; May 24, 1992, and May 31, 1992; specifically on June 12, 1992; June 16, 1992 and June 19, 1992."

The last listed date in the indictment was May 22, 1992.

Violett's jury trial was a classic "she said / he said" case. The first witness for the Commonwealth, was Angela:

Steve Wilson: When did you move in the defendant's home?

Angela: August 1990 [Tr. Tape 2, 5/25/93, 14:37:31]

Steve Wilson: When was the first time, that you can remember, anything happening between you and the defendant?

Angela: January, 1991.

Steve Wilson: January 1991, are you sure? [Tr. Tape 2, 14:36:14-14:39:15]

Angela: YES.

Steve Wilson: Well, answer me this. When was the first time anything happen?

Angela: January 1991, after I turned 13.

Steve Wilson: Answer me this. Did anything happen the next month, February?

Angela: NO!!!

Angela's testimony continued to be unintelligent "blabbering" when Angela was ask leading questions from the Commonwealth, and at one point, the defense caught Ms. Sartain-Smith giving hand gestures as Angela tried to answer leading questions. Violett was over-ruled when he ask for a directed verdict and a motion for mistrial on grounds Angela was being coached to give answers to leading

questions. Angela's testimony was her only "fear" was "her Mother would lose the house if she told." This is an economy fear, not defined in the 1992-1993 version of KRS 510.010(2).

According to court records, the remaining 17 counts, after July 29, 1992, were:

Count # 53 – week of January 20, 1990;
Count # 55 – week of February 03, 1990;
Count # 59 – week of March 01, 1990;
Count # 64 – week of April 05, 1990;
Count # 68 – week of May 04, 1990;
Count # 72 – week of June 10, 1990;
Count # 77 – week of July 09, 1990;
Count # 81 – week of August 02, 1990;
Count # 86 – week of September 05, 1990;
Count # 92 – week of October 04, 1990;
Count # 96 – week of November 02, 1990;
Count # 99 – week of December 06, 1990;
Count # 104 – week of January 12, 1991;
Count # 108 – week of February 19, 1991;
Count # 112 – week of March 26, 1991;
Count # 116 – week of April 03, 1991;
Count # 120 – week of May 10, 1991;

No doubt, Angela did not understand the Commonwealth had fabricated all 298 charges, nor, did Angela know how to respond to the prosecutor's leading questioning and, the court-room participant's [Ms. Sartain-Smith] hand gestures to give fabricated testimony about allegations before January 20, 1991 – her birthday. Angela had only alleged in her interview with the police "one time in the past" on June 16, 1992, while she was getting ready for school in her bedroom. The letters

Violett tried to introduce establishes Angela had sex with an adult 20 year old man on June 16, 1992 while Violett and his wife was out-of-town at a church convention.

Violett was convicted and prison incarcerated on fabricated charges # 53, 55, 59, 64, 68, 72, 77, 81, 86, 92, 96, 99, 104, 108 – because Angela testified nothing allegedly happen until after January 20, 1991 – her birthday. Angela confessed nothing happen in February, 1991. Angela never gave testimony about Counts # 108, 112, 116, or 120. Violett was further convicted and prison incarcerated on dismissed counts # 1-52, 54, 56-58, 69-71, 73-76, 78-80, 82-85, 87-91, 93-95, 97-98, 100-103, 105-107, 109-111, 113-115, 117-119, 121-298 – because those charges were dismissed July 29, 1992, according to court records and, Angela never testimony about these counts.

In this case, the Commonwealth covered up and did not tell the jury, the court, or, the defense, the fabricated 1990 allegations or the dismissed charges, could not be considered because there was insufficient evidence or testimony to support those allegations. SCR 3.130 – 3.8(a) & (c) as this affected the sentencing of Violett. Nor, did the Commonwealth inform the court and the defense because there was lack of evidence or testimony only established an 2nd degree sexual abuse or sexual misconduct offense, this affected the outcome of the sentencing of Violett, making the sentencing illegal and the October 5, 1993 final judgment of conviction void ab initio and, a Brady v. Maryland discovery violation in the sentencing in

Violett's criminal case. A 14th Amendment procedural due process violation. Violett is entitled to relief.

Indictment No. 92-CR-626

During Violett's trial, the police officer testifies he never took any written or recorded statement from Alissa Violett. He also confessed he did not attend a July 10, 1992 one-time interview with Alissa, in the Commonwealth's Attorney office, before the Commonwealth sought the indictments. (Tr. Tape 3, 5/26/93, 13:54:30 – 14:15:34). Carter testified he based his trial testimony on what others told him what was said in that July 10, 1992 interview (Id.) Violett argued *Sharp v. Commonwealth*, 849 S.W.2d 542 (Ky., 1993) applied to hearsay testimony and was over-ruled when Violett ask for a directed verdict of acquittal and motion for mistrial; the trial court over-ruled *Sharp*. In 2014, when Violett finally got to purchase the once-sealed police officer's investigative notes and files, Violett found Carter was at the July 10, 1992 one-time interview and, there was a sworn written statement that never mention rape or sodomy alleged in the indictments.

The July 10, 1992 sworn written statement, signed by Alissa and the police officer (Carter), never alleged Violett committed the heinous rape allegations alleged in Indictment No. 92-CR-626. (T.E. 1-2). Alissa's statement never alleged the acts occurred "in the summer of 1985" as alleged in the Commonwealth's Bill of Particulars, or, the supposedly acts occurred at "1729 Media Drive, in Bowling Green" as alleged in the prosecutor's open statement to the jury, and, Carter's trial testimony. All Alissa alleged in that July 10th, 1992 one-interview was – Violett

allegedly rubbed his penis on her stomach, once or twice, when she was six or seven years old, while Violett lived in Smiths Grove Kentucky. A police theft report shows Violett lived at 1558 North Sunrise Drive, in Bowling Green when Alissa was six or seven years old, Carter confessed there was no investigation in this case.

An 4th Amendment "probable cause" detention exists to arrest a suspect, if at the time of the arrest, the facts and circumstances within the arresting officer's knowledge and which he has reasonably trustworthy information, would warrant a prudent person in believing that the suspect had committed or was committing a crime. When an arrest and indictment occurred, it must be presumed the validity of [the] charging Violett on six (6) counts of 1st degree rape, with the information received from Alissa in that one-time July 10, 1992 interview, supported the probable cause for Violett's detention. But, that presumption of the 4th Amendment detention violation may give way on a showing that the Commonwealth, who sought the warrant or indictment, knowingly or intentionally or with reckless disregard for the truth, made false statements to the judiciary tribunal to get a conviction on fabricated charges.

In legal terms – Carter's testimony constituted "fabricated" testimony because, the Commonwealth knew Carter was giving false testimony and, the Commonwealth did nothing to correct Carter's fabricated testimony about the fabricated rape allegations when there was no probable cause exists to the 4th Amendment of Violett. Plus, the Commonwealth was present when the one-time

July 10, 1992 interview occurred, in his office, where it was never alleged Violett committed any six counts of 1st degree rape, that establishes the Commonwealth fabricated charges after the July 20, 1992 interview.

Violett vehemently argues - and his new evidence establishes - Carter willfully, with intent and reckless disregard to the truth, make false allegations that led to Violett's arrest and continued detention, while Violett awaited trial and, continues to this date, without probable cause because, the Commonwealth had no information or evidence Violett committed any 1st degree rape or 1st degree sexual abuse because, all Alissa alleged was - Violett supposedly "rubbed his penis in her stomach" area, once or twice. Violett further alleges the Commonwealth deprived Violett of a fair trial, by inducing Alissa to give fabricated testimony, by using Ms. Sartain-Smith, to coach Alissa when Alissa testified during trial. The Commonwealth also withheld the July 10, 1992 sworn written statement, which violated Violett's due process rights to discovery under Brady v. Maryland.

During Violett's trial, the subpoenaed social workers refused to testify or release their subpoenaed files. An in-chamber hearing to discuss jury instructions, and the defense moved for a directed verdict of acquittal because the Commonwealth had failed to prove each count of Indictment No. 92-CR-626 and, had failed to prove the rape claims. The Commonwealth conceded there was no proof to support an October 1985 allegation. The Court dismissed the October 1985 offense (Tr. Tape 5, 5/28/93, 3:30 et seq). During jury instructions, the Court never instructed on any October 1985 offense. The Commonwealth gave Juror #61

multiple verdict forms and, Juror #61 marked guilty for an October 1985 offense and, Violett was prison incarcerated on that dismissed October 1985 allegation. (T.E. 57-60) It was not until 2014, when Violett received a copy of Carter's investigative notes and files, Violett discovered a *Brady v. Maryland* violation in sentencing of Violett on that dismissed October 1985 charge. This is a 14th Amendment procedural and substantial due process violation. This would constitute the judgment of conviction void *ab initio*. Violett is entitled to relief.

Questions of Law And Reasons For Review

Did Lower Inferior Courts Fail To Consider The Whole Law of The Case
And Overlook Importance of a Writ Of Habeas Corpus Application
When Appellant Has New Evidence, Court Records, To Support
There Is An Unlawful Sentence, Making Judgment of Conviction Void
To Warrant Habeas Corpus Relief

Reasons For Granting The Petition

The Lower Inferior Courts Misconstrued The Law Of The Case,
Facts Of The Case, That New Evidence, Court Records
Support There Was A *Brady v. Maryland* Sentencing Issue
That Makes The Judgment Of Conviction Void *ab initio*

This Court, in *McQuiggin v. Perkins*, 569 U.S. ..., 132 S.Ct. 1924, 185 L.Ed.2d 1019 (2013), carved out an actual innocence exception to the ADEPA statute of limitations that stands on its own, separate and apart from the exception that already and apart from the exception that already exists, based on equal tolling. Kentucky courts are bound by this Supreme Court's decisions, which gives Petitioner right to petition this Court for relief since the lower inferior Kentucky

courts refuses to address Petitioner's actual innocence claims and the unlawful sentencing involved on Petitioner's criminal conviction.

Affidavit Of Probable Cause
To Support Writ Of Habeas Corpus Relief

October 5, 1993, Warren Circuit Court (Judge Thomas R. Lewis) signed a "Final Judgment of Conviction Order" sentencing Violett to 754 year imprisonment on 123 counts of 1st degree sexual abuse [dismissed July 29, 1992] (all Class D felonies), at 3 years each for a total of 369 years [an illegal sentencing; cannot be more than 20 years]; 17 counts of 1st degree sexual abuse (all Class D felonies) at 5 years for a total of 85 years (An unlawful sentencing; cannot be more than 20 years); and, 6 counts of 1st degree rape at 60 years each when the jury marked only 5 verdict forms, including the October 1985 dismissed count.

That Order is nullity and void because it had Violett convicted on fabricated and dismissed charges. (T.E. 114-116). Under Kentucky Law, that October 5, 1993 Order became final once ten (10) days had elapsed with no action taken to alter, amend, or vacate it, to correct those judicial mistakes. RCr 10.02; CR 59.05; see Silverburg v. Commonwealth, 587 S.W.2d 241, 244 (Ky. 1979).

Realizing Juror #61 had marked "guilty" on the fabricated 17 allegations for 1990, when there was no testimony to support those fabricated 1990 criminal charges; and, Juror #61 had marked "guilty" on that dismissed October 1985 verdict form; that Kentucky law was violated on November 1, 1993, twenty-six (26) days later. Warren Circuit Court signed a prosecutor's prepared Amended Order,

attempting to correct those judicial mistakes, on that October 5, 1993 order, by removing the 17 counts of 1st degree sexual abuse and one count of 1st degree rape; but, the unlawful sentence remained the same – 754 years imprisonment. (T.E. 131-132). Judge Lewis was under the influence of illegal drugs when he signed that amended order.

That November 1, 1993 amended order is nullity and void because it still had Violett convicted and now prison incarcerated on those fabricated and dismissed criminal charges. Thus, the Warren Circuit Court lost jurisdiction to take any action over Violett's criminal case to attempt to correct those judicial mistakes and, committed an illegal act of fraud. See Commonwealth v. Marcum, 873 S.W.2d 207, 211-12 (Ky. 1994); Judge John Potter v. Eli Lilly & Co., 926 S.W.2d 449 (Ky. 1996).

This Court cannot condone or affirm that illegal sentencing or the unlawful method Warren Circuit Court attempted to correct judicial mistakes because “it is the trial judge, and not the jury or the prosecutor or the defendant, that actually imposed a sentence by signing his or her name to the final judgment.” See Phon v. Commonwealth, 545 S.W.3d 284, 302-03 (Ky. 2018). When a trial judge sentences a defendant outside the lawful confines of what is allowed,, that oversteps into the arena of legislative action, and brings contempt of a farce and mockery on the judiciary powers.

That November 1, 1993 amended order shows W. Currie Milliken signed he was Violett's defense attorney. Court record clearly establishes Milliken withdrew from Violett's case at the October 4, 1993 final sentencing hearing so the DPA could represent Violett. Violett was already housed at the Eastern Kentucky Correctional Complex November 1, 1993. Signing that order was an act of fraud.

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The 8th Amendment of the U.S. Constitution, in only three words, imposes the constitutional limitations upon punishment – they cannot be “cruel and unusual”. Sentencing and prison incarcerating Violett on fabricated and dismissed criminal charges falls under that cruel and unusual punishment, after the trial court attempted to cover-up its judicial mistakes because the evidence did not support sentencing Violett on those fabricated and dismissed charges, leaving the 754 year imprison intact, clearly establishes Judge Lewis was under the influence of illegal drugs during deciding Violett’s criminal case.

Violett argues his sentencing is prohibited by the Kentucky Constitution’s Section 17 – making the judgment of conviction void *ab initio*. Under Section 17 of the Kentucky Constitution “a method of punishment is cruel and unusual if it shocks the moral sense of all reasonable men to what is right and proper under the circumstances.” Signing that November 1, 1993 amended order, while under the influence of illegal drugs, leaving the illegal 754 year imprisonment intact, taking out the 17 counts of 1st degree sexual abuse and one count of 1st degree rape violates that Section 17 protections and is a farce and mockery to our judicial system of State government.

CONCLUSION

Kentucky law is very clear – an unlawful sentencing issue can be challenged at any time and the mode of attack are in-material. E.g., *McClanahan v. Commonwealth*, 308 S.W.3d 694 (Ky. 2010); *Phon, supra*. Petitioner contends the Commonwealth failure to disclose Carter’s investigative notes and file and, put the

subpoenaed social workers on the stand to testify, violated the Brady v. Maryland requirements to a fair trial .

Brady requires that due process that a State cannot withhold favorable evidence to the defense that is material to the defendant's guilt or punishment.

Id., 373 U.S. at 87. Under *Brady*, the evidence is material if there is a reasonable probability that had the evidence been disclosed, the results of the proceedings would have been different. See Smith v. Cain, 132 S.Ct. 627, 628-29, 181 L.Ed.2d 571 (citing Cone v. Bell, 566 U.S. 449, 469-70, 129 S.Ct. 1769, 173 L.E.2d 701).

Furthermore, seeking relief in a collateral attack action, in Kentucky, the trilogy of Trevino v. Thaler, 133 S.Ct. 1911 (2013); Martinez v. Ryan, 132 S.Ct. 1309, 1318 (2012); and, Woolbright v. Crews, 791 F.3d 628 (6th 2015) mandates that Kentucky courts should conduct full evidentiary hearings. But, as clearly pointed out in *Woolbright*, (Kentucky courts do not follow their own rules) and suspends right to habeas corpus relief when the claims clearly proves a case of actual innocence.

For these reasons, this Court invoke Supreme Court Rule 36(3)(a) and, Violett vehemently ask for, as a matter of first impression, a Writ of Certiorari should be granted.

Respectfully Submitted By,

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