No. 20-7759

IN THE

SUPREME COURT OF THE UNITED STATES

Roderick Williams — PETITIONER
(Your Name)

vs.

Dexter Payne — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Roderick Williams
(Your Name)

2501 State Farm Rd
(Address)

Tucker, AR 72168
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Does The Failure Of The State To Turn Over Evidence Prior To Trial Automatically Result In A Brady Violation Warranting The Grant Of Habeas Relief?

II. Does International Law Apply To Domestic United States Courts Especially Where A Conviction And Sentence Violate The Eighth Amendment?

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 ____________________; 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[ ] is unpublished.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 ____________________; 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[ ] is unpublished.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

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[ ] is unpublished.

The opinion of the ____________________ court appears at Appendix ______ 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[ ] is unpublished.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 December 1, 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 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. § 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 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

Title 28 United States Code Section 2254(a) states the following; The Supreme Court, a Justice thereof, a circuit judge or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Article VI of the United States Constitution states in pertinent part; This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

Article II, Section 2 of the United States Constitution states in pertinent part; The President..... shall have Power, by and with the Advice and Consent of the Senate, to make Treaties......

STATEMENT OF THE CASE

On January 23, 2020, Petitioner filed a petition for writ of habeas corpus. (See Williams vs. Kelley, Case No. 4:20-CV-00083-BRW, U.S.D.C., E.D. Ark.) In that petition, he raised 4 claims. (DE#1) On May 11, 2020, the magistrate judge recommended that the petition be dismissed. (DE#13) Petitioner filed objections to that recommended disposition, including the raising of a Brady claim. (Appendix 3a-45a) On June 22, 2020, the district court adopted the recommended disposition. (DE#17)

Petitioner filed an application for a certificate of appealability with the Eighth Circuit which was denied on December 1, 2020. (Appendix 1a) Due to the vagaries of the mail system, Petitioner did not receive the ruling until after the time for filing for reconsideration. He then sought an extension of time in which to file for reconsideration which was denied on January 11, 2021.

Petitioner discovered after he had filed his habeas petition that the State had withheld documents from his trial counsel that were crucial to impeaching a law enforcement witness. He discovered this by receiving the prosecutor's file, in which the document was discovered. He raised this in his objections to the recommended

Statement Of The Case, cont'd

disposition.[FN1] The district court never addressed it, and neither did the Eighth Circuit.

Petitioner also contends that his conviction and sentence violates International Law, including the International Covenant On Civil And Political Rights (ICCPR). This case gives this Court the opportunity to rule or clarify as to when international law and treaties apply to domestic U.S. courts.

FN.1: This was also raised in Petitioner's original Heabeas Petition.

REASONS FOR GRANTING THE PETITION

I. The Failure Of The State To Turn Over Evidence Prior To Trial Automatically Results In A Brady Violation Warranting The Grant Of Habeas Relief

While all lawyers are governed by legal and ethical rules, prosecutors are subject to more stringent obligations. Unlike the private lawyer or defense attorney whose obligation is to be a zealous advocate on behalf of his client, the prosecutor has a duty to seek justice because he or she is a representative, not of a single individual, but of the government and society as a whole. (See Charles Wolfram, Modern Legal Ethics, 759(1986))

At Petitioner's first trial, no mention was made of Desha County Sheriff Jim Snyder's Memorandum to the Dumas Police Department in 2010 that authorized them to act as deputy sheriffs outside the Dumas city limits. That memo came to light after a Motion In Limine was filed to suppress Officer Bearden's testimony based on the fact that Arkansas law required a written policy authorizing police to act as law enforcement offices outside of their jurisdictional limits. The Snyder Memo was written in 2010, but not revealed to the defense at either the first or second trial. In fact, Petitioner himself discovered it after the fact when he received a box of discovery materials in preparation for the filing of the instant habeas petition from the prosecutor's office.

The State has long had an obligation under Brady vs. Maryland and its progeny to disclose evidence known to it that is favorable to a defendant's guilt or punishment or whether such is material and whether or not the defendant requests it. (See Strickler vs. Greene, 527 U.S. 263, 1999) This duty encompasses both impeachment and exculpatory evidence. (Id.) Prosecutors have a duty to learn of Brady evidence known to others acting on the State's behalf in a particular case. (See Kyles vs. Whitley, 514 U.S. 419, 1995)

In order for Petitioner to prevail on a post-conviction Brady claim, three essential components of Brady prosecutorial misconduct must be proven. First, the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching. (Youngblood vs. West Virginia, 547 U.S. 867, 2006) (per curiam) ["the Brady duty extends to impeachment evidence as well as exculpatory evidence."] (citing U.S. vs. Bagley, 473 U.S. 667, 1985)

In Bagley, this Court concluded that there is no difference between impeachment evidence and exculpatory evidence with respect to prosecutorial disclosure obligations. (Id. at 676) Accordingly, this Court held that evidence that would be useful to impeach a prosecution witness also falls within the scope of the Brady rule. (Id. at 676) Additionally, this

Court restricted the materiality standard, stating that "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (Id. at 682) By imposing such a narrow definition, the Court created a "very demanding standard of materiality." (See Joseph R. Weeks, No Wrong Without A Remedy: The Effective Enforcement of the Duty of Prosecutors to Disclose Exculpatory Evidence, 22 Okla. City U. L. Rev. 833, 1997)

Exculpatory evidence is not confined to evidence that affirmatively proves a defendant innocent. (Brady vs. Maryland, 373 U.S. 83, 1963) Rather, it extends to "evidence favorable to [the] accused" and "material either to guilt or to punishment." (Id.) It consists of materials that "go to the heart" of the defendant's guilt or innocence. (See United States vs. Ramos, 27 F.3d 65, 3d Cir. 1994) Material must be disclosed under Brady even if the information has inculpatory, as well as exculpatory aspects. (DiSimone vs. Phillips, 461 F.3d 181, 2d Cir. 2006) The standard is whether the evidence is exculpatory, not whether the prosecutor recognized it as exculpatory at the time it was withheld. (Grube vs. Blades, 2006 WL 297203, D. Idaho 2006)

Secondly, the evidence must be impeaching. Impeaching evidence must be disclosed if it is favorable to the accused. (Youngblood) "Impeachment evidence" has been described as evidence "having the potential to alter the jury's assessment of the credibility of a significant prosecution witness." (U.S. vs. Avellino, 136 F.3d 249, 2d Cir. 1998)

Third, Petitioner must prove that the evidence was suppressed if it is favorable. (Bell vs. Howes, 703 F.3d 848, 6th Cir. 2012) While Brady used the term "suppression", it should not be understood to require active removal or hiding of evidence by the State - the issue is whether the prosecution revealed the evidence in a timely manner, regardless of intent or negligence. (Cone vs. Bell, 556 U.S. 449, 2009) Once Petitioner meets this burden by producing evidence, the burden then shifts to the State to demonstrate that the prosecutor satisfied his duty to disclose all favorable evidence known to him or that he could have learned from others acting on the government's behalf. (United States vs. Price, 566 F.3d 900, 9th Cir. 2009)

Brady places an affirmative obligation on prosecutors "to learn of any favorable evidence known to the others acting on the State's behalf in the case" and requires disclosure by the prosecution not only of information actually known to the prosecutor, but of all information in the possession of the prosecutor's office, the police, and others acting on behalf of the prosecution." (Kyles vs. Whitley, 514 U.S. 419, 1995) This also applies to postconviction Brady obligations.

Petitioner meets the first prong of Brady by showing that the evidence was favorable to him. In this case, the Snyder memorandum was generated before Petitioner's second trial in 2010. Up to that point, it appears that city police routinely went outside their jurisdiction in violation of A.C.A. 16-81-106. This was never brought out in the first trial. In the second trial, in response to a motion in limine filed by the defense, Sheriff Snyder hastily drew up a memorandum in an attempt to do an end run around 16-81-106. If the memorandum had been made available to the defense, it could have been used to impeach law enforcement's assertions that they were acting in accordance with state law. Had the jury seen this memorandum, the result would have been different. The conviction is illegal and Petitioner is imprisoned in violation of the Constitution, Laws, and Treaties of the United States.

The second prong of <u>Brady</u> requires that the evidence be impeaching. This has already been demonstrated above. Had the State turned the Snyder memorandum over to the defense under its Brady obligations, counsel could have established that an illegal arrest occurred. The memo was not even generated until before the second trial.

Third, Petitioner must prove that the evidence was, in fact, suppressed. He meets the requirement because the Snyder memo was never turned over until Petitioner found it in a box of legal documents that the prosecutor's office sent him in lieu of the filing of the habeas petition. The State intentionally withheld that document, plain and simple.

Kyles did establish that a "defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. None of the Brady cases has ever suggested that sufficiency of evidence (or insufficiency) is the touchstone." (Id.)

At least 2 circuit courts of appeal have recently ruled that Brady violations justified the grant of permission to file a second or successive habeas petition. (See Will vs. Davis, 970 F.3d 536, 5th Cir. 2020; Long vs. Hooks, 972 F.3d 442, 4th Cir. 2020) In Long, the facts of that case are similior to this one. In the concurring opinion, the 3 concurring judges excoriated the habeas procedures that reward state actors for Brady violations.

The *Long* court split 9-6 in that decision. Both the *Will* and *Long* courts entertained *Brady* issues years after their initial habeas efforts.

The *Brady* issue is enough for at least 4 justices to vote to grant certiorari. This Court should hear and decide the case.

II. International Law Applies To Domestic United States Courts Especially Where A Conviction And Sentence Violates The Eighth Amendment

International law binds each of the states that comprise the United States. Arkansas is bound by international law whether found in treaty or in custom. Because the sentence and conviction violate international law, certiorari should be granted.

"International law is part of our law." (The Paquette Habana, 175 U.S. 677, 1900) A treaty made by the United States is the Supreme law of the land. (Article VI, U.S. Consti) Where state law conflicts with international law, it is the state law that must yield. (See Zscherng vs. Miller, 389 U.S. 429, 1968) International law creates remediable rights for United States citizens. (See Filartiga vs. Pena-Irala, 630 F. 2d 876, 2d Cir, 1980)

The United States' membership and participation in the United Nations (U.N.) and the Organization of American States (OAS) creates obligations in all fifty states. Through the U.N. Charter, the United States committed itself to promote and encourage respect for human rights and fundamental freedoms. (Art. 1(3)) [United Nations Charter] The United States again proclaimed the fundamental rights of the individual when it became a member of the OAS.

The U.N. has sought to achieve its goal of promoting human rights and fundamental freedoms through the creation of numerous treaties and conventions. The United States has ratified several of these including: the International Covenant On Civil And Political Rights (ICCPR) ratified in 1992, and the Convention Against Torture (CAT) ratified in 1994. Under the Supremacy Clause, the ICCPR and the CAT are the supreme law of the land. As such, the United States must fulfill the obligations incurred through ratification.

Arkansas is not fulfilling the United States' obligations under these conventions.

Rather, Petitioner's due process rights were violated and as a result, the conviction and sentence violates each convention's requirements and thus must yield to the requirements of international law.

The ICCPR, ratified in 1992, and adopted by the United States, guarantees equal protection of the law. (ICCPR Art. 2(1), 3, 14, 26) The ICCPR further guarantees due process via Articles 9+14. However, Petitioner's conviction and sentence was obtained through the denial of due process, especially considering the fact that a crucial document was withheld by the State.

Failure to rectify this situation by the lower federal courts is a direct violation of international law and of the Supremacy Clause of the United States Constitution.

While conditions, reservations, and understandings accompanied the United States' ratification of the ICCPR and the CAT, those conditions, reservations, and understandings cannot stand for 2 reasons. Article II, Section 2 of the U.S. Constitution provides for the advice and consent of two-thirds of the Senate to modify, condition, or make reservations to treaties. The Senate is not given the power to determine what aspects of a treaty the United States will follow. Its role is to simply advise and consent.

The Vienna Convention on the Law of Treaties further restricts the Senate's imposition of reservations. It allows reservations unless they are prohibited by the treaty, the treaty provides that only specified reservations, not including the reservation in question, may be made, or the reservation is incompatible with the object and purpose of the treaty, (Vienna Convention On The Law of Treaties, Art, 19 (a)-(c)) The ICCPR specifically precludes derogation of Articles 6-8, 11, 15-16, and 18, Under the Vienna Convention, the United States' reservations to these articles are invalid under the language of the treaty, (Id.) Further, the ICCPR's purpose is to protect life and any reservation inconsistent with that purpose violates the Vienna Convention, Thus, the United States' reservations cannot stand under the Vienna Convention as well,

This Court should grant certiorari to resolve these issues and resolve the larger question of international law applying to domestic United States courts, especially in the context of a violation of an Eighth Amendment right to be free from cruel and unusual punishment in the imposition of a sentence.

The standard in habeas petitions is whether Petitioner is held in custody "in violation of the Constitution, Laws, or Treaties of the United States." (28 U.S.C. Section 2254(a)) As Petitioner has shown, treaties that the United States has ratified forbid the type of treatment that has been afforded to Petitioner thus far. Therefore, this Court should grant certiorari to address when international law and treaties apply to habeas corpus cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roderick Williams

Date: 4/1/21