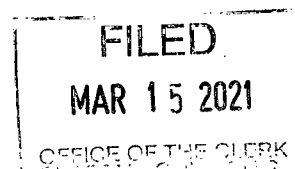


No. 20-8110 ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Lawrence Edward Jackson PETITIONER
(Your Name)

vs.

STATE of Maryland - RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Court of Appeals of Maryland
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lawrence Edward Jackson, Jr.
(Your Name)

NBCI 14100 McMullen Hwy Sw
(Address)

Cumberland, Maryland 21502
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. If there is a dispute, as to the reliability and/or adequacy of the DNA testing procedures employed in the initial test by the prosecution at the time of trial, do a criminal defendant have a statutory right under Maryland's Postconviction DNA testing review statute [i.e. Criminal Procedure Section 8-201] along with a constitutional right under the Fifth and Fourteenth Amendment to the United States Constitution, to challenge the validity of the adverse DNA test results, via confirmatory retesting, on the basis of a wrongful conviction?

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 judgement is the subject of this petition is as follows: *The Circuit Court for Prince George's County Maryland*

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	9
CONCLUSION	13

INDEX TO APPENDICES

APPENDIX A: ORDER of DISMISSAL by the Court of Appeals of Maryland
APPENDIX B: ORDER of DENIAL by the Circuit Court for Prince George's County, Maryland

TABLE OF AUTHORITIES CITED

CASES: N/A

PAGE No.

STATUTES AND RULES: The Annotated Code of Maryland, Courts and Judicial Proceedings, Section 10-915 [b] and,

Maryland Code Annotated
Criminal Procedure 8-201 MNA Post-conviction testing review statute.

OTHER: The Due Process Clause to the United States Constitution 5th and 14th Amendments and,

The Report from the National Institute of Justice National Commission on the future of DNA Evidence Postconviction DNA testing: Recommendations for Handling Requests. [September 1999]

PAGE No.

24, 63

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

☐ 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 _____ 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 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 Circuit Court For Prince George's County 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.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 1-4-2021.
A copy of that decision appears at Appendix A.

☐ 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

The constitutional provisions involved in this case consists of the due process clause to the United States Constitution. In particular, the 5th and 14th Amendment. The due process clause afforded the Petitioner the right and opportunity to litigate a free standing claim of factual innocence at the time of trial. And since he was found guilty beyond a reasonable doubt, the due process clause continues to afford him the right and opportunity to challenge that guilty finding in State courts in numerous ways. One, in particular, DNA Evidence - Postconviction Testing Review.

The statutory provisions involved in this case consists of Maryland Code Annotated Criminal Procedure 8-201 and the Annotated Code of Maryland, Courts and Judicial Proceedings, Section 10-915.

In respects to the Md. Code Ann. Crim. Proc. 8-201 DNA Postconviction testing review statute, the legislature enacted the DNA testing statute to serve as a means to speedily resolve claims of innocence based in DNA test results.

Criminal Procedure 8-201 d [1] iii provides that a court shall order DNA testing if the court finds that a reasonable degree of probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing and the requested DNA testing employs a method generally accepted within the relevant scientific community.

Whereas, the facts of this case supports the proposition that confirmatory retesting on two [2] black ski masks has the scientific potential to prove or disprove identity. Therefore, showing a profile other than the Petitioner would ultimately constitute exculpatory evidence relevant to his claim of a wrongful conviction.

In respects to Md. Cts and Jud. Proc. 10-915, it governs the admissibility of DNA evidence in Maryland courts. Section 10-915(b) provides in pertinent part:

(b) In general— A statement from the testing laboratory setting forth that the analysis of genetic loci has been validated by standards established by TWGNAM or the DNA Advisory Board is sufficient to admit a DNA profile under this section.

Whereas, since the initial testing conducted by the prosecution at trial was never certified, as being validated according to standards established by: (i) The Technical Working Group on DNA Analysis Methods [TWGNAM]; or

(ii) The DNA Advisory Board of the Federal Bureau of Investigations, as required under 10-915 (b), the Petitioner should be constitutionally and statutorily entitled to challenge the validity of the initial testing conducted by the State at his trial, on the basis of a claim of a wrongful conviction.

STATEMENT OF THE CASE

STATEMENT OF THE CASE

1. On April 26, 2002, two (2) masked gunmen had entered the 7-Market grocery store located in Bladensburg, Maryland. During the ensuing robbery, 1 of 3 victims were fatally wounded. The two (2) masked gunmen then fled the scene in a green four-door vehicle [Acura]. Moments later, that vehicle was found abandoned by a local law enforcement officer. Inside, were two (2) black hooded ski masks.

2. In the circuit court for Prince George's County, Case No. C 1021260 X, the petitioner was charged and indicted with first degree murder and other related offenses. The petitioner entered a "not guilty" plea and the matter was specially assigned to Judge William B. Spellbring, Jr, for trial set for September 15, 2003.

3. The State's evidence implicating the petitioner consisted of, testimony from State's witnesses, Ikemefuna Chukwurah and Dettrict H. Douglas, Jr, both of whom, testifying pursuant to a plea bargain, admitted their involvement in the robbery / murder and identified the petitioner as a participant. And,

4. The State's "Scientific Identification Evidence" implicating the petitioner consisted of two (2) black hooded ski masks in-conjunction with DNA match testimony from Rupert Page, the State's DNA expert witness, from the Prince George's County Police Department DNA Laboratory.

5. On September 12, 15, 2003, the petitioner and his attorneys, appeared in the circuit court for Prince George's County, on a hearing Motion In Limine To Exclude The DNA test results on the grounds that the State had failed to comply with the requirements of Maryland Code [2002], Courts and Judicial Proceedings, 10-915 section [b]. The petitioner argued that the DNA test results should not be admitted because the State had failed to provide the defense with a certification from the testing laboratory setting forth that the analysis of genetic loci has been validated by standards established by TWGDAM or the DNA Advisory Board, as required under 10-915 [b]. The motion was granted in part. The circuit court held that the State was in non compliance with 10-915 section [b]. As such, it would not admit the DNA test results under 10-915 nor exclude it but rather have a Frye-Reed hearing. Trial was postponed pending a Frye-Reed hearing. The petitioner ultimately withdrew from the Frye-Reed hearing then renewed his motion to exclude the DNA test results. The motion was denied.

6. On February 6, 2004, the jury returned with verdicts of guilty.

7. On February 9, 2004, the petitioner, by and through his attorneys, filed a Motion For New Trial on the grounds that "the trial court erred in some of its rulings during the trial in this matter which led to his conviction in this case. Specifically, the defendant would incorporate by reference his Motion To Strike DNA Evidence And Testimony in this case and the Points and Authorities cited therein for the proposition that the DNA evidence presented in this matter was accepted by the trial court in error. No mathematical percentage of probability was provided in discovery as mandated by Maryland law, as to the likelihood that the DNA obtained in this case was that of the defendant. The opinion voiced by Rupert Page, the DNA technician, was not the standard accepted in Maryland and unduly prejudiced the defendant." The motion was denied.

8. On April 9, 2004, the petitioner was sentenced to life, plus 140 years.

9. On October 27, 2017, the petitioner, acting pro'se and pursuant to the Maryland Code Annotated Criminal Procedure Article 8-201 DNA Postconviction testing review statute, sought to have a statutory and constitutional right to challenge the validity of the adverse DNA test results and expert "Match" testimony, offered by the prosecution at trial, via confirmatory retesting. The petitioner requested to use the same exact scientific methods allegedly used in the initial trial and/or testing which was the Polymerase Chain Reaction [PCR] and Short Tandem Repeats [STR] scientific methods.

The petitioner requested for a hearing.

10. On July 18, 2019, the State filed an opposition to the petitioner's petition.

11. On August 11, 2020, the circuit court denied the petitioner's petition without a hearing. [See Appendix B]

12. On August 27, 2020, the petitioner filed a "Notice of Appeal" to the Court of Appeals of Maryland seeking review of the circuit court decision.

13. On January 4, 2021, the "Notice of Appeal" was ultimately "DISMISSED" pursuant to Maryland Rule 8-602(a) [See Appendix A]

14. This is the petitioner's first Petition For Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

REASONS FOR GRANTING THE PETITION

1. Due Process Clause to the United States Constitution affords the petitioner the right and opportunity to challenge the circuit's court guilty finding in State courts in numerous ways. One in particular, Postconviction DNA testing under Maryland Code Annotated Criminal Procedure 8-201.

2. The primary purpose underlying Md. Code Ann. Crim. Proc. 8-201 [2008], regarding postconviction DNA testing, is to provide a means for incarcerated persons to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing.

3. The practice of retention of DNA samples for potential future retesting when doing so is advisable when it is possible. See National Institute of Justice, National Commission on the Future of DNA Evidence, POSTCONVICTION DNA TESTING: RECOMMENDATIONS FOR HANDLING REQUESTS 24, 63 [Sept 1999], [recommending that samples be split whenever possible before and during the testing process].

4. The rationale for the above preference is manifest: the preservation of a sample for retesting provides a means to challenge the reliability of an adverse test result by attempting to replicate the result in a subsequent test in the event there is a dispute as to the adequacy of the testing procedures employed in the initial test.

5. In the instant case, the petitioner sought his statutory right under Maryland's Postconviction DNA testing review statute 8-201 and his constitutional right under the due process clause to the U.S. Constitution to challenge the validity of the adverse DNA test results and expert "Match" testimony offered by the prosecution at trial, via confirmatory retesting on the basis that the circuit court made a judicial determination that the analysis conducted by the prosecution in this matter was not certified by the testing laboratory as being validated according to standards established by either The Technical Working Group on DNA Analysis Methods [TWGDAM] or The DNA Advisory Board of the Federal Bureau of Investigations, as required under Maryland Code Annotated Courts and Judicial Proceedings 10-915(b).

6. The circuit court denied the petition without a hearing stating: "there are no facts nor allegations that a reasonable probability exists that DNA testing has the scientific potential to produce exculpatory or mitigating evidence because the DNA evidence was tested by a lab using the standards and protocols that were in place at the time and resulted in inculcating the Defendant and not exculpating the Defendant."

7. The petitioner noted a timely appeal to the Court of Appeals of Maryland.

8. The Court of Appeals of Maryland, pursuant to Maryland Rule 8-607(a), DENIES the "Notice of Appeal" on the grounds that: "CP 8-201 does not entitle a petitioner to have evidence previously subject to DNA testing subjected to confirmatory retesting..."

9. Since it is well-established that the practice of retention of DNA samples for potential future retesting is advisable when possible for the purpose of challenging the reliability of an adverse test result by attempting to replicate the result in a subsequent test in the event there is a dispute as to the adequacy of the testing procedures employed in the initial test, CP 8-201 [the Maryland's Postconviction DNA testing review statute] should entitle a criminal defendant to challenge the validity of the adverse DNA test results offered by the prosecution at his/her trial, via confirmatory retesting, on the basis of a claim of a wrongful conviction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lawrence E. Jackson Jr.

Date: March 14, 2021