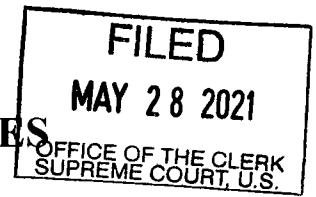


20-8270
No: _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



* * * * *

MAURICE A JACKSON

Petitioner

V.

THOMAS McGINLEY

Respondent

* * * * *

**ON PETITION FOR WRIT OF CERTIORARI TO
THE THIRD CIRCUIT COURT OF APPEALS**

* * * * *

PETITION FOR WRIT OF CERTIORARI

* * * * *

MAURICE A JACKSON JH2936
1 Kelley Drive
Coal Township, PA. 17866
Prose Petitioner

QUESTIONS PRESENTED

Mr. Jackson alleges his trial counsel was ineffective. His trial counsel failed to have key pieces of evidence collected at the crime scene tested for and against his DNA. Trial counsel failed to meet with Mr. Jackson prior to trial timely to discuss any strategy. The strategy would have included how to question the Commonwealths eye witness, DNA testing of the evidence and other possible witnesses including video footage that could help with Mr. Jackson's alibi. By not meeting with Mr. Jackson prior to trial timely on a 1st degree murder case, the trial counsel showed a definite preview of being ineffective. This also lessened the chances of Mr. Jackson presenting reasonable doubt as well as proof that he was not at the scene and another individual or individuals were involved in the murder of the decedent. Trial counsel should have requested the body and clothing of the decedent to be tested for GSR. Again, had trial counsel met with Mr. Jackson prior to the trial timely, these items could have been discussed and a proper decision could have been made.

The conviction was made by a very large part of the Commonwealths witness who claimed to be an eye witness' testimony. This witness showed inconsistencies in his statements to the police as well as his testimony's. Had his testimony been impeached, the probability of Mr. Jackson being convicted would have been much smaller. This same witness could have been the actual doer. He was never investigated.

Mr. Jackson was prejudiced by these actions and lacks thereof. Trial counsel stated she did not have a hat that was collected as evidence tested as it may have implicated the Defendant as the doer. It should also be noted the Commonwealth did not test the hat for or against Mr. Jackson's DNA. I would believe that the Commonwealth would have tested it to make their case stronger. By not doing so, it should have been thought maybe the Commonwealth knew Mr. Jackson could

be exonerated of the crime. Mr. Jackson maintained his innocence from the very beginning. He also knew better than anyone if the hat was in any way associated with him. Trial counsel should have consulted with Mr. Jackson prior to trial and at the very least had the hat tested.

In finding no prejudice or merit, the Third Circuit relied mostly on the Court of Common Pleas Court's Statement of Facts and Direct Appeal, but significantly misstated even the slanted version of the facts. The case thus presents the following questions:

1. Did the third circuit court err in deferring to the Court of Common Pleas finding that Mr. Jackson was not prejudiced by trial counsel not having key pieces of evidence tested for DNA?

SUGGESTIVE ANSWER: YES

2. Did trial counsel err by not having key pieces of evidence tested for and against DNA of Mr. Jackson and any other person?

SUGGESTIVE ANSWER: YES

3. Did trial counsel err by not having the body and clothing of the decedent tested for GSR?

SUGGESTIVE ANSWER: YES

4. Did trial counsel err by not impeaching the witness for the Commonwealth's testimony?

SUGGESTIVE ANSWER: YES

5. Did trial counsel err by not meeting with Mr. Jackson prior to trial timely to discuss strategy and go over discovery?

SUGGESTIVE ANSWER: YES

6. Did trial counsel err by not having the police investigate the Commonwealth's witness as a possible suspect?

SUGGESTIVE ANSWER: YES

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**PETITION FOR WRIT OF CERTIORARI
TO THE PENNSYLVANIA SUPREME COURT**

The Petitioner, Maurice Jackson, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Third Circuit Court of Appeals, rendered in these proceedings on March 3, 2021.

OPINION BELOW

The Third Circuit of Appeals affirmed Petitioner's conviction in its Case No. 20-2194. The opinion is unpublished, and is reprinted in the appendix A of this Petition. The order of the Third Circuit Court of Appeals denying rehearing is reprinted in the appendix C of this Petition.

JURISDICTION

The original opinion of the Third Circuit was entered on March 3, 2021. A timely motion for rehearing to that court was not allowed. The Jurisdiction of this court is invoked under **28 U.S.C. §1254**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Statutory and Constitutional provisions are involved in this case.

U.S. CONST., AMEND. V.

No person shall be held to answer for a capital, or otherwise infamous crime... without due process of law.

U.S. CONST., AMEND. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy 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 defense.

U.S. CONST., AMEND. XIV.

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 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.

28U.S.C.§2254

(a) 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.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

- (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
- (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

STATEMENT OF THE CASE

Defendant, Maurice Jackson, was arrested on July 30th, 2007 and charged with murder and related offenses. On July 28, 2008, Defendant appeared before the Honorable Sheila Woods-Skipper and elected to be tried by a jury. On August 1, 2008, he was convicted of murder in the first degree, carrying a firearm without a license, and possession of an instrument of crime.

Sentencing was deferred until October 17th, 2008 at which time, Defendant was sentenced to a term of imprisonment of life imprisonment on the murder bill and concurrent terms of two to four years on carrying a firearm without a license, and one to two years on the possession of an instrument of crime bill.

A timely post sentence motion was filed on October 24, 2008. This motion was denied by operation of law on February 24, 2009. Superior Court affirmed the judgment of sentence on March 17, 2011 (814 EDA 2009) Defendant then petitioned the Supreme Court of Pennsylvania to appeal. This was denied on July 12, 2011 (239 EAL 2011).

On February 23, 2012 Defendant filed a timely prose` PCRA. Counsel was appointed. On November 27, 2013 court appointed counsel for an appeal to the Superior Court. On August 31, 2015. The Appeal was denied. On January 4, 2016, the Defendant filed a timely Habeas petition on April 18, 2017. The U.S. Magistrate Judge issued a report and recommendation finding against the Defendant. On June 1, 2017, the Defendant filed timely objections. U.S District Court remanded after sustaining two and overruling two of the objections. On remand, Counsel was appointed. On May 31, 2019 the U.S. Magistrate Judge filed a supplemented report and recommendation. On May 15, 2020, The U.S. District Court denied the

Defendants petition for Writ of Habeas Corpus. On December 4, 2020, Defendant petitioned the United States Court of Appeals for the 3rd circuit for rehearing. On March 3, 2021, the petition was denied. Before this court now is a timely petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT.

I. THE THIRD CIRCUIT'S MISAPPLICATION OF THE PREJUDICE STANDARD OF *STRICKLAND* WARRANTS THIS COURTS ATTENTION.

The Third Circuit's opinion misapplied the *Strickland v. Washington*, 466 U.S.668, 687-88 (1984), test for prejudice in several important ways. When Mr. Jackson was abandoned by his counsel at a critical stage of his case. Counsel failed to investigate as well as speak with her client prior to trial to have a complete strategy. *Rivas v. Fisher* 780. F. 3d529(2dCir.2015) “*The relevant question is not whether counsel's actions were reasonable, but whether there is any reasonable argument that counsel satisfied Strickland's differential Standard.*” Counsel believed it was strategic to not test the DNA as the Defendant may be implemented in the crime. *United States v. Mooney*, 497 F. 3d397,404(4th Cir 2007) “*Counsel in criminal cases are charged with the responsibility of conducting appropriate investigations, both factual and legal to determine if matters of defense can be developed.*”

Kramer v. Kemma. 21 F. 3d.305,309. “*Failure to interview witnesses or discovering mitigating evidence may be a basis for finding ineffective assistance of counsel.*” Counsel failed to speak with the Defendant prior to trial to even know if any evidence collected would actually harm or help the Defendant. The DNA if tested could have helped the Defendant several ways. It could have helped prove he was not present, it could have helped prove who was present, it could have possibly found out the Commonwealth's eyewitness could have actually been the doer. *Elmore v. Ozmint*, 661 F. 3d 783,851 (4th Cir 2011) “*Counsel ineffective for failing to investigate forensic evidence.*” Trial counsel did not go over the defenses nor how the case may play out. *Heard v. Addison*, 728 F. 3d 1170,1186 (10th

Cir 2013) “*defense counsel provided ineffective assistance in failing to advise Defendant of viable defenses to the charges against him.*” Had counsel investigated properly, he would have found out the Defendant had never seen or had any affiliation to the hat that was discovered, nor the shell casings found. These objects would have given the police at least one other theory. The casing could have belonged to the decedent and he may have been firing at someone or it may have been his gun and he may have attempted to rob, harm or to some other damage to someone and the gun was taken from him and he was shot. It was very important for counsel to investigate and that included speaking with the Defendant. *Nelson v. Hargett*, 989 F. 2d 847,850 (5th Cir 1993) “*a Defendant who alleges a failure to investigate on the part of his counsel must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial.*” Had this been investigated it could have raised several forms of reasonable doubt, but it would have been highly likely the trial against the Defendant would not have went forward as the actual doer would have possibly been found, but at the least they would have known it wasn’t the Defendant.

Even if the Defendant did not speak with trial counsel prior to the trial, Counsel was still obligated to investigate to form a defense. *Bower v. Quartermann*, 497, F. 3d 459,467(5th Cir 2007) “*defense counsel has a duty to independently investigate the charges against their client.*” *Crisp v. Duckworth*, 743 F 2d. 580-83 (7th Cir 1984) “*Though there may be unusual cases when an attorney can make a rational decision that investigation is unnecessary, as a general rule an attorney must investigate a case in order to provide minimally competent representation.*” *Vega v. Ryan*, 757 F. 3d. 960,969 (9th Cir 2014) “*Counsel has a duty to investigate, even if his or her client does not divulge relevant*

information.”

At the trial, the Commonwealth’s witness testified he saw the shooting, but at the preliminary hearing he stated he did not see the shooting because he ran away. Counsel noted the statements to be inconsistent also with what statements were given to the police, yet they failed to impeach this witness’s testimony. ***United States v. Orr***, 636 F. 3d 944, 951-52 (8th Cir. 2011) “*Failure to impeach witness constitutes ineffective assistance when there is a reasonable probability that, absent counsel’s failure, jury would have had reasonable doubt of Defendant’s guilt.*” ***Silva v. Woodford***, 279 F. 3d. 825,833 (9th Cir 2002) “*Attorney’s failure to prepare for and challenge the testimony of a critical witness may be so unreasonable as to violate both prongs of the Strickland test.*” The Defendant was prejudiced by this.

United States v. Butler, 504 F. 2d 220,224 (D.C. Cir 1974) “*Failure to impeach witness with inconsistent pre and trial testimony was ineffective assistance.*”

This court requires, in making the prejudice analysis under *Strickland*, that the reviewing court consider all of the evidence in the record, both that which was admitted at the trial and that which is developed at the post- conviction stage. ***Strickland v. Washington***, 466 U.S. 668, 687-88 (1984). ***Rompilla v. Beard***, 545 U.S. 374 (2005); ***Wiggins v. Smith***, 539 U.S. 510 (2003); ***Williams (Terry) v. Taylor***, 529 U.S. 362 (2000). Under this test, it is inappropriate to consider the evidence in the light most favorable to the verdict. It is clear that the Court of Appeals here disregarded this principle.

The Appellate Court reviewed the records and saw the conflicting testimony. Further they saw counsel failed her client. These factual issues do not require the attention of this court. What

does merit review is the emerging practice of the Third Circuit of ignoring evidence while performing prejudice analysis. This was precisely the type of review that this court condemned in *Williams (Terry) v. Taylor*, 529 U.S. 362, 397-398 (2000).

The State Supreme Court's prejudice determination was unreasonable insofar as it failed to evaluate the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding in reviewing it against the evidence in aggravation. [Citations omitted]. This error is apparent in its consideration of the additional mitigation evidence developed in the post-conviction proceedings...

The State Court failed even to mention the soul argument in mitigation that trial counsel did advance. Williams turned himself in, alerting police to a crime they otherwise would never have discovered, expressing remorse for his actions, and cooperating with the police after that. While this, coupled with the prison records and querid testimony, may not have overcome a finding of future dangerousness, the graphic description of Williams' childhood, filled with abuse and privation, or the reality that he was "*borderline mentally retarded*." Might well have influenced the jury's appraisal of his moral culpability...

The 6th Amendment provides for a criminal defendant the right to "the assistance of counsel for his defense". This right has been accorded. It has been said, not for its own sake, but because of the great effect it has on the ability of the accused to receive a fair trial. It follows from this that assistance which is ineffective in preserving fairness does not meet constitutional mandate. Here, Mr. Jackson has met his claim of ineffectiveness of counsel by his showing that his 6th Amendment right was violated and if not but for counsels' unprofessional errors, the result of the proceeding would have been different. Appendix G of this filing has the visitation logs for Mr. Jackson from pretrial time periods. Nowhere will you find a visit from his trial attorney. Mr. Jackson was abandoned at a very crucial time in a case that could very well have been tried as a capital case. The first critical and very important stage in a defense of a capital or murder general case is the series of pretrial meetings between the accused and his counsel when they decided how the case

should be defended. A lawyer cannot possibly determine how best to represent a new client unless that client is willing to provide the lawyer with a truthful account of the relevant facts. Here, Mr. Jackson not only wanted to speak with his counsel, but he was ready to provide truthful information which would help exonerate him. Especially information about DNA on objects he knew nothing about. Had counsel at least met with Mr. Jackson and confirmed with him on a strategy, this would have been made known. This still holds true today. Mr. Jackson's DNA would not be found on any evidence from the scene if it is tested.

Because the Third Circuit Court of Appeals has truncated the scope of *Strickland v. Washington*, 466 U.S 668, 667-88 (1984), prejudice review, this court must grant Certiorari.

CONCLUSION

For these reasons a **Writ of Certiorari** should issue to review the Judgement and opinions of the Pennsylvania Third Circuit Court of Appeals.

Respectfully Submitted,


MAURICE A. JACKSON JH2936
1 KELLEY DR.
COAL TOWNSHIP, PA 17866