

20-8428

No. _____

Supreme Court, U.S.
FILED

MAR 08 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH GEORGE — PETITIONER
(Your Name)

vs.

M. SPEARMAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States COA for the 9th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph George BF-3836
(Your Name)

PELICAN BAY STATE PRISON
P.O. BOX 7500, C-3-224
(Address)

Crescent City, CA 95532
(City, State, Zip Code)

ORIGINAL
(Phone Number)

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MAR 16 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Does false evidence and expert witness perjured testimony the alleged victim suffered a fracture of the zygomatic buttress qualify for the Schlup doctrine?

Can reasonable jurist find it debatable that petitioner stated a constitutional claim by the prosecution using perjured testimony and false evidence at jury trial?

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 B 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☒ is unpublished.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 A 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 November 20, 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: December 11, 2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

STATEMENT OF THE CASE

This is an actual innocent case. Petitioner was found guilty at jury trial of assault by means likely to produce great bodily injury and battery with serious bodily injury.

On perjured testimony and false evidence the alleged victim suffered facial fractures

The District Court and the United States Court of Appeals for the Ninth Circuit failed to issue a certificate of appealability on any of the five issues.

Petitioner seeks release from custody.

JURISDICTION FACTS

1. On 11/20/20, the United States Court of Appeals for the Ninth Circuit "9th Cir" denied petitioner's request for certificate of appealability (See Appendix B)

2. On 12/11/20, The 9th Cir denied petitioner's petition for rehearing but erroneously referred to the petition as a motion for reconsideration (See Appendix B)

STATEMENT OF FACTS

3. On 3/31/17, Allen Reed pushed petitioner while working at McDonald's and was subsequently punched in the mouth.

4. San Diego Police Officer Garay Davis arrived and Reed told Officer Davis petitioner punched him in the mouth.

(See Officer Davis Report as Appendix C)

5. Five hours later at Dr. Timothy, Smith, Mission Valley Oral and Maxillofacial Surgery Inc in San Diego, CA.. Dr. Smith did a CT scan and falsely reported Reed suffered a non displaced fracture of the right zygomatic buttress.

(See Dr. Smith Report as Appendix D)

6. On 4/5/17, Dr. Marlon Hanley, Affordable Dentures in Houma, LA, Dr. Hanley did a CT scan and determined Reed showed no evidence of fracture to mandible or facial structure

(See Dr. Hanley Report as Appendix E)

7. On 4/20/17, Dr. David Baughman, Oral Facial Surgery Center in Louisiana did a radiograph and determined Reed has a possible non displaced greenstick fracture of the right sub condylar region.

8 And possible right mandibular fracture.

(See Dr. Baughman Report as Appendix F)

9. On 5/2/17, At the Preliminary Examination Judge William Shore bind over petitioner after Detective Holland Tafoya testified Reed suffered a jaw fracture called zygomatic buttress.

RT 20:3-9 without medical records RT 28:18-19.

(See Preliminary Examination Transcripts as Appendix G)

10. On 10/27/17, At the Conditional Examination, Dr. Smith testified it takes a hard shot to break the zygomatic complex or zygomatic maxillary complex. Because it very dense hard cortical bone that don't break easy. RT 11:7-21.

11. Under cross examination, Dr. Smith testified he did not see any redness in Reed face RT 17:15.

12. When asked did he see any swelling? Dr. Smith testified I think he probably had some edema. RT 17:26.

13. When asked about bruising. Dr. Smith said I did not see any. RT 18:19. (See Conditional Examination Transcripts as Appendix H)

Argument:

Dr. Smith lacks credibility because he said it takes days to show a broken jaw or bruising on white skin. RT 18:12-15. Dr. Smith never described an injury to the right side of Reed outer lying skin to his face. Dr. Smith also failed to report Reed's upper and lower swollen lips (to conceal the fact Reed was punched in the mouth) like Officer Davis.

THE JURY TRIAL (All Trial Transcripts are in Appendix I)

Reed committed perjury by testifying he suffered a broken jaw by petitioner's one punch. That Dr. Smith discovered two facial fractures. RT 467:20 and Dr. Baughman discovered an additional or third facial fracture. RT 472:18-19; 473:19-20

Argument:

Dr. Hanley report states Reed has no facial fractures. (See Appendix E.)

Dr. Baughman report is false and fabricated because he falsely reports Dr. Hanley referred Reed for a jaw fracture. Also the report states possible fractures not three fractures.

On the patient questionnaire form at Drs. Smith and Baughman Offices. Reed answered all the questions but did not report jaw pain or clicking (See Appendix D and F)

Reed committed perjury by testifying Dr. Hanley did a regular X-ray RT 471:2-15.

Argument:

Under cross examination Reed admits Dr. Hanley did a CT scan RT 513:3-6.

Officer Davis testified Reed said he was punched in the mouth. RT 482:2-5 Appendix C.

Officer Davis testified Reeds upper and lower lips were swollen RT 482:20-22 Appendix C.

Officer Davis testified there was no injuries to the right side of Reeds face. RT 482-26-483:6.

Officer Davis testified he took pictures of Reed injuries and dentures. RT 483:15.

ACTUAL INNOCENT CLAIM

The question presented is does false evidence and expert witness perjured testimony the alleged victim suffered a fracture of the zygomatic buttress qualify for the Schlup doctrine?

The other question presented is can reasonable jurist find it debatable that petitioner stated a constitutional claim by the prosecution using perjured testimony and false evidence at jury trial?

Petitioner's answer is yes to the two presented questions. First, the needs to review the petition to see if there is a substantial showing of the denial of a constitutional

Right. See *Lambright v. Stewart* (9th Cir. 2000) 220 F.3d 1022.

Petitioner presented proof that Reeds right zygomatic buttress was not fractured. Therefore, petitioner is innocent. Does petitioner qualify for the excuse from all Federal procedural defaults under Schlup doctrine in *Schlup v. Delo* (1995) 513 U.S. 298.

PROSECUTORIAL MISCONDUCT CLAIM

Deputy District Attorney knowingly used perjured testimony and false medical report Reed suffered a now displaced fracture of the right zygomatic buttress and three facial fractures (See Dr. Hawley report as Appendix E)

Deputy District Attorney Hoy Betz repeated to jury the false testimony Dr. Smith discovered two facial fractures Dr. Baughman discovered a third facial fracture, and the machinery and quality of the scan were different.

See RT 694:15-695:28.

It has been a long establish principle that the knowing or unknowing use with or without correction of false evidence violates the due process of the 14th Amendment of the United States Constitution. *Napue v. IL* (1959) 360 U.S. 264, 269.

DDA Betz did not attempt to correct the falsity in the case. *Mooney v. Holohan* (1935) 294 U.S. 103, 112 the Court held a conviction obtained through deliberate deception of Court and jury is inconsistent with the rudimentary demands of justice. Reversal is required because the false evidence corrupts the truth seeking process *Hall*, 393 F.3d. 976.

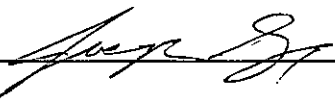
REASONS FOR GRANTING THE PETITION

Its time for independent judicial review to restore the rule of law and living up to the oath of enforcing and defending the United States Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: March 4, 2021