

121-5288

In The
Supreme Court of the United States

ORIGINAL
FILED
JUL 02 2021

Cornelius L. Jones
Petitioner

-VS-

People of the State of Illinois,
Respondents

The Circuit Court of the Sixth Judicial
Circuit, MACON County, Illinois
CASE No. 08-CF-1053
Appellate Court of Illinois, Fourth
District CASE NO. 4-19-0166
Supreme Court of Illinois
CASE NO. 127101

ON Petition FOR A WRIT OF CERTIORARI TO
APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

Petition FOR WRIT OF CERTIORARI

This Petition is to address the deprivation, under color
of state law, of rights secured by the constitution
of the U.S. And given jurisdiction under 28 U.S.C. § 1257.

Cornelius L. Jones

Cornelius L. Jones

S-08870

MENARD Correctional Center

P.O. Box 1000

MENARD, IL 62259

Questions Presented

Cornelius L. Jones, Petitioner - Appellant, Appeals from A judgment denying his motion for leave to file A successive Post-Conviction Petition. An issue is RAISED concerning the sufficiency of the Post-Conviction Pleadings.

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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 _____ 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☐ is unpublished.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☐ is unpublished.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 D 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☒ is unpublished.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 Appellate 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☒ is unpublished.

Jurisdiction

The Supreme Court denied Cornelius L. Jones's Petition for Leave to Appeal on MAY 26, 2021. The Appellate Court Affirmed Cornelius L. Jones's conviction on JANUARY 26, 2021. MR. Jones filed A Petition for Rehearing on FEBRUARY 16, 2021. The Appellate Court denied the Petition for Rehearing on MARCH 1, 2021. A copy of the Appellate Court's judgment, and its order denying the Petition for Rehearing ARE Appended to this Petition.

Constitutional And Statutory Provisions

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Statement of the Case

In 2009, A jury convicted Petitioner of first degree murder. (C168; R679) Petitioner's cousin, DORIAN HARRIS, WAS ALSO charged, but WAS NOT tried with Petitioner. (C28-33; R174) In 2011, Petitioner filed his initial post-conviction petition, but did not include A claim that his trial counsel WAS ineffective for failing to interview AND CALL HARRIS, because he had not yet learned, through AN AFFIDAVIT, how HARRIS would have testified OR how HARRIS would have responded to counsel's interview attempts. (C208-224, 459-488) When Petitioner received HARRIS' AFFIDAVIT in 2018, Petitioner filed A petition for leave to file A successive post-conviction petition alleging cause because he "could not have made A colorable claim until he obtained" the AFFIDAVIT from HARRIS. (C459-488) The circuit court dismissed the petition, in PART, for A lack of cause and the Appellate court affirmed explaining, in PART, that Petitioners could have raised the claim earlier because the Post-conviction Act allows A petitioner to file A claim without supporting documentation if the petitioner states why the supporting documents ARE NOT attached. (487-488); People v. Jones, 2021 IL App(4th) 19 0166-U, ¶25. The Appellate court's decision here invites

Petitioners to raise claims before they know if the claim is meritorious. The invitation to file meritless claims cannot be the intent behind the Post-conviction Act when there is already a clear mechanism - the Cause and Prejudice test - for limiting the number of successive Post-Conviction Petition. 725 ILCS 5/122-2 (2018) In fact, this Court has held that claims of actual innocence based on eyewitnesses who come forward after trial with testimony that exonerates the defendant can be asserted after the petitioner knows how the eyewitness would testify. See *People v. Coleman*, 2013 IL 113307, ¶102 (granting a new trial based on five eyewitnesses who came forward after trial and said they were involved in or present for the crimes and that the defendant was not). This includes witnesses previously known to the petitioner who would have been unwilling or unable to testify. See *People v. Robinson*, 2020 IL 123849, ¶¶29, 54 (alibi witness who did not want to testify earlier because of the "code of silence" imposed by their gang, was "newly discovered"). The Post-Conviction Act and this Court's (Supreme Court of Illinois) jurisprudence suggests that a petitioner should wait to assert a claim of ineffective assistance of counsel for failing to interview and call a specific witness until the petitioner knows how the witness would testify.

Reason for Granting Petition

This Court should grant certiorari because the Appellate Court erred by denying Petitioners' Pro Se successive Post-Conviction Petition for a lack of "cause", because Petitioner purportedly could have raised the claim in an earlier Petition without the Affidavit, even though Petitioner would not have known how the witness would have testified until he received the Affidavit.

The Appellate Court's decision invites petitioners to raise claims before the Petitioner knows if a claim is meritorious. A Petitioner can not know if he has a meritorious claim that counsel was ineffective for failing to interview and call a witness if the Petitioner does not know how the witness would testify. A rule that encourages petitioners to file potentially meritless claims is not the purpose behind 725 ILCS 5/122-2, which allows a petitioner to file a claim without supporting documentation if the petitioner explains why the required documentation is not attached. The Appellate Court's rule would lengthen the pendency of litigation, because after filing the claim the petitioners would need an opportunity to attach the supporting documents that he could not initially obtain. Therefore, if the Petitioner filed a claim,

that he received ineffective assistance of counsel when counsel failed to interview and call a witness. After the petitioner learned how the witness would testify that would conserve judicial resources. Clarification is needed to ensure petitioners know when they need to assert a claim that their constitutional rights were violated by ineffective assistance of counsel. This Court's guidance is needed so that petitioners can fully litigate their alleged violations and do so in a timely manner.

The Illinois Supreme Court has long upheld claims of actual innocence based on eyewitnesses who come forward after trial with testimony that exonerates the defendant. See *People v. Robinson*, 2020 IL 123849, 99 29, 54 (alibi witness who did not want to testify earlier because of the "code of silence" imposed by their gang, was "newly discovered"); *People v. Coleman*, 2013 IL 113307, 91 02 (granting a new trial based on five eyewitnesses who came forward after trial and said they were involved in or present for the crimes and that the defendant was not); *People v. Ortiz*, 235 Ill. 2d 219, 334 (2009) (granting a new trial based on a new eyewitness who witnessed the murder and testified that the defendant was not involved); *People v. Molstad*, 101 Ill. 2d 128, 136 (1984) (granting a new trial based on

newly discovered testimony from co-defendants that the defendant WAS not present At the time of the crime).

To obtain leave to file his successive Post-conviction Petition, Petitioner needed to show "cause" for his inability to RAISE the issue previously And "prejudice" resulting therefrom. People v. Smith, 2014 IL 115946, 933. "Cause is shown by identifying An objective external factor that Prevented the defendant from RAISING the claim earlier. Smith, 2014 IL 115946 At 933 (citing 725 ILCS 5/122-1(f)).

"Prejudice" is shown by demonstrating the Alleged Constitutional error "so infected the entire trial that the resulting conviction or sentence violates due process." All well-pleaded facts ARE taken AS true. People v. Towns, 182 Ill. 2d 491, 503 (1998).

When counsel fails to interview A potential witness, he cannot make An informed decision AS to whether to call that witness. See People v. Bell, 152 Ill. APP 3d 1007, 1013 (3d Dist. 1987). The failure to conduct A REASONABLE investigation OR to interview A witness cannot be A matter of trial strategy, And therefore is UNREASONABLE. People v. MAKiel, 358 Ill. APP. 3d 102, 107; see ALSO People v. Truly, 230 Ill. APP. 3d 948, 954 (1st Dist. 1992) (counsel's

decision could not be strategic because counsel failed to investigate possible defenses).

Petitioner made a prima facie showing of cause when he alleged that counsel failed to interview or call co-defendant, that co-defendant would have testified truthfully at trial had he been subpoenaed, and that he was unwilling to provide an affidavit any earlier. (C 464-479, 485-486) Co-defendant established prejudice because co-defendants' testimony would have corroborated Petitioner's theory of self defense - a defense that was otherwise uncorroborated at trial. (C 464-479, 485-486) Because Petitioner's petition and co-defendants' affidavit established both cause and prejudice, the circuit court erred by denying Petitioner's leave to file the successive petition. Co-defendants' unwillingness to provide an affidavit is the objective factor that impeded Petitioner from raising this claim sooner. (C 464-479, 485-486) Petitioner could not raise this claim until co-defendant agreed to cooperate and provided an affidavit. Thus, where the factual basis for Petitioner's claims were not "reasonably available" during the prior proceedings, he has identified an objective factor that impeded his ability to raise these claims

during his initial Post-conviction Proceedings, constituting a PRIMA FACIE showing of "CAUSE" FOR PURPOSES OF meeting the Requirements to Allow his successive Petition to be docketed And Advanced for Further Proceedings. BAILEY, 2017 IL 121450, 125. The Appellate Court's finding that Petitioner could have RAISED the claim without the Affidavit overlooks that Petitioner's motion And Petition ARGUED that his Counsel WAS ineffective for failing to interview And call co-defendant At trial, because his testimony would have CORROBORATED Petitioners' own testimony. The Appellate Court's decision invites Petitioners to RAISE claims before they know how witnesses would testify or if their claims ARE meritorious thereby overloading the courts with meritless Petitions.

The Appellate Court found that Petitioner failed to establish prejudice, but the Appellate court overlooked the entirety of co-defendants' Affidavit, And that At the leave-to-file stage, A reviewing court should not Analyze whether trial Counsel's decision not to call A witness WAS sound strategy. People v. Jones, 2021 IL APP(4th) 190166-4, 1926-27; See BAILEY, 2017 IL 121450 At 124. Petitioner's motion for leave to file established prejudice

because there is A Reasonable Probability that the court would have granted self-defense instructions if co-defendant had testified, which may have led to an Acquittal or A conviction for a lesser offense, second degree murder.

Co-defendant averred, "if I had of been subpoenaed I would have testified truthfully to the facts, and to the fact in this Affidavit." (C 485) In the Affidavit, Co-defendant attested that on the day of the shooting he saw Topps try to pull a gun from his right side just before Petitioner pull out his gun. (C 485) If interviewed and then called at trial, co-defendants' proposed testimony would have corroborated Petitioner's testimony that Petitioner fired in self defense. (C 485; R 508-9) Thus, when the entirety of co-defendants' Affidavit is considered, and taken as true like all well pleaded facts are required to be at this stage, Jones' motion for leave-to-file his successive Post-Conviction Petition established prejudice because co-defendant would have ignored his counsel's advice, and testified at Petitioner's trial, thereby corroborating Petitioner's testimony that he fired in self-defense. In Illinois, a defendant has both a statutory and constitutional right to appeal.

Ill. Const. 1970, ART. VI, § 6; 730 ILCs 5/5-5-4.1 (2018).

Failing to Address CRITICAL ASPECTS of Petitioners' ARGUMENT on APPEAL effectively denied him his constitutional and statutory right to appeal, and denied him a fair appellate process.

The PRIMARY PURPOSE of an APPEAL is to CORRECT ERROR. Robert K. Calhoun, WAIVER of the RIGHT to APPEAL, 23 Hastings Const. L.Q. 127, 163 (1995). Beyond that, an APPEAL serves the development of the law, the assurance that the law will be applied with a degree of uniformity, and the legitimization of the law in the public's eye. Calhoun, WAIVER of the RIGHT to APPEAL, 23 Hastings Const. L.Q. 127, 163. Addressing a defendant's contention is the initial step in the appellate court's primary duty of error correction. If the court fails to address CRITICAL ASPECTS of a defendant's arguments, the defendant cannot have a meaningful appeal. Additionally, when the appellate court fails to address CRITICAL ASPECTS of a defendant's arguments, it undercuts the fairness of the appellate process. Fairness is at the core of the due process guarantee that an "opportunity to be heard occur at a meaningful time and in a meaningful manner." Lyon v. Dept of

Children And Family Servs., 209 Ill. 2d 264, 277 (2004); See Also People v. Hall, 198 Ill. 2d 173, 177 (2001); U.S. Const., Amend. XIV; Ill. Const. 1970, Art. 1 § 2. Failing to Address critical Aspects of a defendant's Arguments does not provide for meaningful review, and thus violates a defendant's right to due Process. Due to the critical nature of the right to appeal and a defendant's right to due process, this Court should grant Petitioners' Writ of Certiorari.

Petitioners' Petition and co-defendants' supporting Affidavit established both Cause and Prejudice and therefore leave to file Petitioners' successive post-conviction Petition should have been granted. The Appellate Court's decision affirming the denial of Petitioners' leave to file, invites Petitioners to raise claims before they know how a witness would have testified and therefore before the Petitioner knows if the claim is meritorious. Therefore, this Court should grant certiorari because the Appellate Court erred by denying Petitioners' successive Post-conviction Petition for a lack of "Cause", because petitioner purportedly could have raised the claim in an earlier Petition without the Affidavit, even though petitioner would not have known how the witness would have testified until he received the Affidavit.

Conclusion

For the foregoing REASONS, Cornelius L. Jones, Petitioner-Appellant, respectfully requests that this Court grant his writ of Certiorari, vacate the order denying leave-to-file his successive post-conviction Petition, and remand this matter for second-stage post-conviction proceedings, including the appointment of counsel.

Respectfully Submitted,

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