

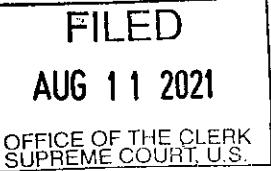
No. 21 - 5426

IN THE
SUPREME COURT OF THE UNITED STATES

Stephen C. Shockley - PETITIONER

vs.

Bobby Lumpkin, Director TDCJ CID - RESPONDENT



ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Stephen C. Shockley, # 1793928
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QUESTION PRESENTED
U.S. Const. Amend. XIV

When a federal district court refuses to hear the due-process component of a state habeas claim because that claim was twice presented to the State and therefore suffers a state-relitigation bar, does the district court's refusal constitute error in light of this Court's holding in Cone v. Bell, 566 U.S. 449 (2009)?

Does this Court's outlook change where the facts show the claim was not relitigated in the state?

NOTE: This Court held in Cone v. Bell, that state relitigation bars offer no bar to federal review of state claims.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

RELATED CASES

- **The State of Texas v. Stephen Coleman Shockley**, No. 366-82727-09 In The 366th District Court of Collin County, Texas. Judgment Entered on 24 May 2012
- **Stephen Coleman Shockley v. The State of Texas**, No. 05-12-01018CR In The Court of Appeals Fifth District of Texas at Dallas, Judgment Entered on 30 July 2014
- **Stephen Coleman Shockley v. The State of Texas**, No. PD-1093-14, In The Texas Court of Criminal Appeals. Petition For Discretionary Review was REFUSED on 14 January 2015. Motion For Rehearing was timely-filed on 2 February 2015 and DENIED on 25 February 2015.
- **Ex Parte Stephen Coleman Shockley**, No. WR-84,823-09. On state habeas corpus: In The Texas Court of Criminal Appeals. Judgment Entered on 9 November 2016.
- **Stephen C. Shockley #1793928 v. Director, TDCJ-CID**, No. 4:17cv196 Judgment Entered on 30 March 2020 In The United States District Court For The Eastern District of Texas, Sherman Division.
- **Stephen C. Shockley v. Bobby Lumpkin, Director, TDCJ-CID**, No. 20-40305 In The United States Court of Appeals For The Fifth Circuit. Judgment Entered on 25 March 2021.

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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

The opinion of the United States court of appeals appears at Appendix A to the petition and is UNPUBLISHED.

The opinion of the United States district court appears at Appendix B to the petition and is UNPUBLISHED.

JURISDICTION

The date on which the United States Court of Appeals decided my case was 25 March 2021.

A timely petition for rehearing was denied by the United States Court of Appeals on 12 May 2021.

NOTE: This Court should note that the Court of Appeals treated Petitioner's Motion For Panel Rehearing as a Motion For Leave To File Out-of-Time. This owing to the fact that the Clerk marked the Motion For Panel Re-hearing as FILED on the date-of-reciept rather than on the date in the Inmate Declaration Of Filing which shows the Motion For Panel Rehearing was filed timely on the last day of the period for filing.

Because of the Clerk's error, Petitioner's Motion For Panel Re-hearing was not heard.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment 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 the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws. (Emphasis added).

STATEMENT OF THE CASE

This case stems from the District Court refusing to hear a claim raised under 28 U.S.C. 2254 where the State had previously relied upon a state "relitigation" bar to dispatch the claim. Petitioner has argued, and the record is clear, that his state habeas application "relitigated" no denial of a federal right.

Even if "relitigation" had occurred, this Court has made clear that state "relitigation" bars DO NOT bar federal review by a District Court. Indeed, the presence of a state relitigation bar has the opposite effect: it leaves the claim "ripe for federal review." See CONE v. BELL, 566 U.S. 449, 466 (2009).

The pertinent facts are:

A. UNDERLYING TRIAL EVENTS GIVING RISE TO CLAIM

- (1) Petitioner was tried by jury under Texas Penal Code (TPC) §21.02 on the allegation that two or more times during a period of 30 or more days he used his hand to penetrate the outer plane of, or to contact the ^{organ} sexual of a minor female.
- (2) The State's case was not a strong one. The Court of Appeals, Fifth District of Texas at Dallas, found the State's need for evidence to remain "considerable" at the end of its case-in-chief.
(See Appendix D, at 8)
- (3) To rebut both the defensive theory of fabrication, and Defense Counsel's introduction of Petitioner as a "20 year veteran of the U.S. Air Force..." employed by "Boeing [with a] Secret security clearance...hard working...a good father...a good husband,"

(RR3:17), the State presented rebuttal testimony by Ms. Kristen Chandler, a woman 30 years of age. Kristen alleged that 15 years prior, Petitioner had a sexual relationship with her.

(4) Ms. Chandler's third-party extraneous testimony was graphic. It alleged "oral on me" and "actual sex...the penis in the vagina," (RR4:14). The instant case contained no allegation of oral sex, no allegation of actual sex, no penis, no vagina and most-certainly no allegation that one was ever near the other.

(5) The Prosecutor's closing argument frequently turned to Kristen's graphic, remote, third-party extraneous complainant:

- a. The Prosecutor argued beyond the evidence when she told jurors that "what happened to [Kristen] is the same thing that happened to the [instant complainant]." (RR4:90);
- b. The Prosecutor told jurors that the persistent duality in her argument was intentional: "I want to focus on [the instant complainant] and what this defendant did to [her] and what this defendant did to Kristen [the remote third-party extraneous complainant] because what he did is not right," (RR4:93); and finally,
- c. The arguments became fatal to fair trial when the Prosecutor told jurors to employ Kristen's third-party impeachment testimony improperly as the first set of facts upon which they should find the defendant guilty of the indicted offense: "Find the defendant guilty," she urged, "because not only did he [1] hurt Kristen [the third-party extraneous witness] so many years ago, [2] he's hurt a second child..." (RR4:95).

(6) Defense counsel did not preserve the improper jury arguments, nor did he seek a curative instruction to re-constrain juror's guilt-innocence determination to the charged offense.

(7) Jurors returned a guilty verdict and a 99 year sentence. The sentence includes no possibility of parole.

B. DIRECT APPEAL

(8) On direct appeal Petitioner challenged the admissibility of Kristen Chandler's remote, third-party extraneous testimony under Texas Rules of Evidence (TRE) §401-404(b). The Texas Court of Appeals, Fifth District at Dallas, found the testimony admissible under Texas law and affirmed the conviction. (See Appendix D, at 10)

(9) The Texas Court of Criminal Appeals (TCCA) refused a timely Petition For Discretionary Review and a Motion For Rehearing on the "admissibility" issue leaving all state remedies properly and fully exhausted. The admissibility complaint under TREs §401-404(b) was abandoned at that time.

C. STATE HABEAS CORPUS

(10) Based on the trial events in paragraphs (5) and (6) above, Petitioner raised two federal claims on State Habeas; neither concerned the "admissibility" of the Chandler testimony under state law.

Those claims were:

a. State Habeas Ground Three alleged that the Prosecutor's improper jury arguments denied Petitioner the 14th Amendment due-process right to fair trial. He demonstrated in the trial record that the Prosecutor's improper arguments infected the guilt/innocence determination with the facts of Ms. Chandler's third-party extraneous allegation. (See Appendix E, at 1)

b. State Habeas Ground Four (Subground Three), alleged the denial of the 6th Amendment right to effective counsel where counsel failed to preserve or attempt to correct the Prosecutor's improper arguments. (See Appendix E, at 2)

(11) On habeas review, the trial court misapprehended the federal due-process component of Ground Three to be a continuation of the State-law admissibility argument previously raised and exhausted. The State then raised a false relitigation bar to immunize the

the claim against further habeas review.

(12) Likewise, that court misapprehended the nature of the Ineffective Assistance of Counsel (IAC) claim to concern the mere admissibility of the Chandler testimony under State law rather than the Prosecutor's "dual-basis" for conviction argument that denied Petitioner's federal right to fair trial U.S. Const. 14th Amend.

The court found that Counsel's silence during the Prosecutor's arguments was not ineffective-assistance because Counsel's post-hoc rationalization of his silence pointed to a running bill of objection.

(13) The running bill of objection upon which Counsel relied had nothing whatsoever--zero--to do with the improper jury arguments of the Prosecutor. (See Appendix G, for Terms Of The Running Bill)

(14) Throughout the habeas process, Petitioner has given notice that his claims are being misapprehended and pinned-down behind a false bar (State Ground Three) or misapprehended and unreasonably resolved concerning IAC (State Ground Four, Subground Three). Nonetheless, courts continue to attend only the misconstrued version of his claim. (See Appendix H, for a compendium of notice given.)

D. FEDERAL HABEAS CORPUS

(15) On 17 March 2017, Petitioner filed a petition for writ of habeas corpus in the United States Federal District Court for the Eastern District of Texas. Petitioner argued that the claims relevant here were being misconstrued and asked for an evidentiary hearing to formally establish that he had raised a federal due-process challenge to the State's use of Kristen Chandler's testimony as the first basis

for conviction, not the testimony's admissibility for impeachment purposes under Texas state law.

(16) The District Court denied the hearing and refused to hear the due-process claim concerning the improper dual-basis-for-conviction pressed upon jurors during the State's closing. The court based its refusal solely and explicitly on the State's assertion of a "relitigation" bar under State law. (See Appendix B, at 1)

(17) On 10 July 2020, Petitioner timely-filed application for a Certificate of Appealability (COA) in the United States Court of Appeals for the Fifth Circuit arguing that jurists of reason would disagree with the District Court's ruling because:

- a. The Prosecutor's explicit argument urging jurors to find guilt first upon the facts of the third-party extraneous allegation of Ms. Chandler constituted a clear and egregious denial of the federal due-process right to fair trial.
- b. The trial court's determination that the claim was a relitigation of the "admissibility" argument raised on Direct Appeal was a factual finding contradicted by clear-and-convincing evidence in the record.
- c. The running-bill upon which Defense Counsel relied to excuse his silence during the improper jury arguments by the Prosecutor was granted on a completely unrelated issue and was powerless to assist the defense on the issue at hand.

(18) On 25 March 2021, a single Justice denied the Application without explanation. The same Justice denied Motion For Panel Rehearing. The Mandate issued and the case closed.

(19) Owing to the State's artful misconstruction of Petitioner's habeas grounds and the District Court's improper deference to the State's assertion of a "relitigation" bar, the federal claims concerning paragraphs (5) and (6) above, remain unheard.

REASONS FOR GRANTING THE PETITION

The Holding In CONE V. BELL, 566 U.S. 449 (2009) Compels This Court To Now GRANT, VACATE, and REMAND (GVR) This Case And Order The District Court To Hear The Federal Due-Process Claims Concerning Paragraphs (5) and (6) Above.

Petitioner's appellate efforts have previously focused on exposing the State's Mischaracterizations of his claim and the tactical hijinks employed to avoid correcting, or even acknowledging the consequences of such mischaracterizations. In particular, the falsity of the resulting state-relitigation bar raised on state habeas.

It is upon the State's relitigation bar that the Federal District Court expressly relied to decline hearing Petitioner's due process claim concerning the trial events of paragraphs (5) and (6) above. (See Appendix B, page 1) See also pg 7

However, in recent days Petitioner has become aware of Supreme Court precedent holding that even IF a state-relitigation bar is true, such bars DO NOT foreclose federal review of a state habeas claim carried forward to a Federal District Court under 28 U.S.C. §2254. Please consider :

"When a state court declines to review the merits of a Petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review. In Ylst V. NUNNEMAKER, 501 U.S. 747, 804 n.3 (1991) we observed in passing that when a state court declines to revisit a claim it has already adjudicated, the effect of the latter decision upon the availability of federal habeas is "nil" because a later state decision based upon ineligibility for further state review neither rests upon procedural default nor lifts a pre-existing procedural default. "When a state court ~~refuses~~ to readjudicate a claim on the

ground that it has been previously determined, the court's decision does not indicate that the claim has been procedurally defaulted. To the contrary, it provides strong evidence that the claim has already been given full consideration by the state court and thus is ripe for federal consideration." See this Court's opinion in CONE V. BELL, 566 U.S. 449, 466-67 (2009)

The Federal District Court's error is clear as both a matter of fact (Petitioner relitigated no federal claim during state habeas that he had previously raised on direct appeal), and as a matter of law (even if he had sought relitigation of a federal claim, relitigation bars in the State do not bar federal habeas review). The Federal District Court's refusal to hear the claim is therefore error that must be corrected to allow Petitioner to vindicate his right to fair trial under U.S. Const. Amend. XIV.

Petitioner asks this Court to GRANT certiorari, VACATE the Judgment in the case, and REMAND to the United States Federal District Court For The Eastern District of Texas. Petitioner further prays this Court order the District Court to hear the due-process (fair trial) component of the prosecutorial misconduct claim that culminated in the State offering jurors a dual-basis-for-conviction to include a charge for which Petitioner was not on trial AND the IAC claim related thereto. (See Pages 6A and 7A of the original federal petition submitted under 28 U.S.C. §2254 available at Appendix F, pages 6A 7A).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Incarcerated Pro-se Petitioner

11 August 2021

Date