No 21-5558

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL LANGRUM II,

Petitioner,

v.

BOBBY LUMPKIN, Director, Texas Department of Criminal Justice
Correctional Institutions Division,

Respondent,

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

William Paul Langrum II
pro se- Petitioner
3899 Hwy 98
New Boston, Tx 75570

QUESTIONS PRESENTED

1) The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a one-year statute of limitations for state inmates seeking federal habeas corpus relief. Langrum II was time barred for a portion of the appeal to the lower courts under the notion that "the facts supporting the first and fourth grounds became or could have become known prior to the date on which his conviction became final." Would it be discoverable for a defendant, prior to trial, to know of the private investigator and/or DNA expert hired to assist him or her in preparation for trial?

2) Strickland does not require any appealate court to defer to decisions that are uninformed by an adequate investigation into the controlling facts and law. Langrum II's Writ of Habeas Corpus rulings are marred with decisions that are uninformed by an adequate investigation into the facts. In the interest of justice and fairness to the American public, at what stage does the actual pre-trial investigation become a portion of the record?

3) Whether ther is evidence in the record to support the indictment and conviction? Does the "presumtion of prejudice" recognized in Roe v. Flores-Ortega, 528 U.S. 470(20000), apply where a trial judge informs a criminal defendant's counsel to file for an appeal?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner William Paul Langrum II respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION AND ORDER BELOW

The United States Court of Appeals for the Fifth Circuit's order (App. A1-A2) is unpublished. The order of the District Court Northern District of Texas, Dallas Division (App. B1-B2) is unpublished. The findings, conclusions and recommendation of the United States Magistrate Judge (App. C1-C8) is unpublished. The Trial Court's findings of fact and conclusions of law (App. D1-D7) is unpublished.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on June 1, 2021. This Court has jurisdiction pursuant to 28 U.S.C.§1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment of the U.S. Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right ...to have the assistance of counsel for his defense."

The Fourteenth Amendment of the U.S. Constitution provides that "No state shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. Trial and Direct Review

William Paul Langrum II was arrested on September 21, 2011. On October 4, 2011 attorney Richard Franklin was appointed to be the lead attorney for the capital murder charge. On September 3, 2013 Franklin signed an Omnibus Pretrial Motio. As a part of the pretrial motion the request for expert assistance was granted by the presiding judge.

During closing arguments Danielle Uher told the jury that "it all comes down to what do you think he was stabbing her for." RR5:134. The State proffered zero evidence of a robbery nor attempted robbery of the deceased. Trial counsel McClung did object earlier about the State placing it to the jury that it was up to what they believed and not what was proven. RR3:40-41. The objection was sustained, however, nothing more was said by trial counsel nor the trial court.

Mr. Langrum II was convicted on September 12, 2013. On October 23, 2013, John Tatum was appointed. Tatum filed two grounds on direct appeal:1) insfficiency of evidence; and 2) inadmissible

use of an extraneous offense. The Texas Court of Criminal Appeals (TCCA) affirmed the conviction stating that "In this case, the fact that various items belonging to Bennett, including her cell phone, wallet, keys, and miscellaneous cards and papers, were found scattered on the ground near her body is circumstantial evidence that appellant attempted to rob Bennett."

B. State Habeas Proceedings

After filing a grievance with the Texas State Bar, Langrum II eventually received the requested trial case file on April 29, 2016. On December 14, 2016, Langrum II filed a state habeas application in accordance with Tex. Code Crim. Proc. art. 11.07 as a pro se applicant.

In view of the fact that there was not an indication of any interviews or any evidence of hiring nor appointment of a private investigator nor a DNA expert, Langrum II presented the following four grounds: 1) Trial Counsel Was Ineffective For Failing To Subject The State's Case to Meaningful Adversarial Testing With Available Impeachment Evidence; 2) Applicant Was Denied The Effective Assistance Of Counsel In Violation Of The Sixth And Fourteenth Amendments To The United States Constitution As A Result Of Defense Counsel's Unreasonable Failure To Investigate, Develop And Present Evidence And Argument; 3) Defense Counsel Was Ineffective For Failing To Present Expert Testimony To Rebut The States Theory And Expert Testimony; 4) Applicant Was Denied Effective Assistance Of Counsel When Counsel Failed To properly Object To Inadmissible Evidence Depriving Applicant Of The Right To A Fair And Impartial Trial. Trial counsel's response, via an affidavit, unveiled the names Bill Hunt and Dr. Robert Benjamin, neither of which Mr. Langrum II had heard of prior to trial counsel's affidavit.

The Findings of Fact reveals record besed complaints that are rejected by unsupported theories: ie, "Had Franklin attempted to impeach Dorian with this omissio, she would have indicated that she told Elzey what she'd seen or that she was making it up as she testified at trial(and to the prosecutor when they spoke).

Ultimately, the state habeas court concluded: Langrum II failed to prove that he received ineffective assistance of counsel. And that Langrum II did not prove that counsel's representation fell below an objective standard of reasonableness. The TCCA adopted the findings and denied relief. Ex parte Langrum, No. WR-87,370-01(Tex.Crim.App.2018) (not designated for publication).

C. Federal Habeas Proceedings

On October 19, 2018 Langrum II filed a pro se federal habeas petition. However, the Court concluded that only the first ground (failure to subject the State's case to meaningful adversarial testing with available impeachment evidence) and the fourth ground (failure to properly object to admission of an extraneous offense) were untimely. In regards to ground two (failure to investigate and present evidence) and ground three (failure to present expert testimony), the Court concluded that Langrum II could not have, through due diligence, discovered the private investigator and DNA expert that trial counsel asserts assisted prior to trial. The District Court for the Northern District of Texas, Dallas Division's Findings, Conclusions and Recommendation, prepared by the Magistrate Judge concluded that the petition should be summarily Dismissed With Prejudice. This recommendation was accepted by the District Judge on June 17, 2020.

Langrum II filed a Motion For Issuance of Certificate of Appealability in the Court of Appeals for the Fifth Circuit. On June 1, 2021 the Court of Appeals for the Fifth Circuit Denied Langrum II's motion.

REASONS FOR GRANTING RELIEF

The Fifth Circuit deferred to decisions that are uninformed by an adequate investigation into the controlling facts and law. It prevented the meritorious claims from record support by refusing an evidentiary hearing. This court should grant certiorari to stop the Fifth Circuit for deferring to decisions unsupported by the record.

I. THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER APPOINTMENT/HIRING OF INDIGENT DEFENDANT'S DEFENSE TEAM

BECOMES PART OF THE RECORD PRIOR TO TRIAL.

Neither of the lower courts disagree on the fact that Langrum II could not have, through due diligence discovered that Bill Hunt nor Dr. Robert Benjamin were appointed and/or hired, as private investigator and DNA expert, respectively, to assist in th defense during trial, until after Langrum II appeals to the court for not having the assistance they could have provided.

A. THE FIFTH CIRCUIT DETERMINED THAT LANGRUM II HAS NOT SHOWN THAT REASONABLE JURISTS WOULD FIND THE DISTRICT COURT'S ASSESMENT OF THE CONSTITUTIONAL CLAIMS DEBATABLE OR WRONG.

In Wiggings v. Smith, 123 S.Ct. 2527(2003), the Court stated (concluding that abandoning an investigation at an "unreasonable juncture" can make "a fully informed decision with respect to sentencing strategy impossible"). While Langrum II's case does not involve sentencing strategy, (the constitutional norms by which effectiveness of criminal representation is measured extends equally to the guilt and sentencing phases of capital trials. Washington v. Strickland, 693 F.2d at 1250; Williams v. Maggio, 679 F.2d 381(5thCir.1982); Davis v. Alabama, 596 F.2d 1214(5thCir. 1979); United States v. Pinkney, 551 F.2d 1241(D.C.Cir.1976).

The findings, Conclusions and recommendation of the United States Magistrate Judge, which were accepted, failed to address the factual question raised: was Bill Hunt and/or Dr. Robert Benjamin a part of the defense team prior to trial. In Loyd v. Smith, 899 F.2d 1416(5thCir.1990), dates of appointment are specified for expert assistance:"On April 28, 1981, the state court appointed Donald Cicet to represent Loyd. On May 1, 1981 Hackman and Lewis were appointed to succeed Cicet as counsel. On May 13, the Louisiana court appointed Dr. St. Martin, who at this time had been treating Loyd for approximately two and one-half weeks, and Dr. Kenneth Ritter, a Board Certified Psychiatrist and a specialist in Forensic Psyhiatry, to a Sanity Commission." "Prior to the 1983 trial, Loyd's mother gave Hackman $2000 to retain a psychiatrist to assist in the defense. Hackman used $750 of the fund to retain Dr. C.B.Scrignar to evaluate Loyd." In Langrum II's case there are not any dates nor amounts rendered

to gauge when Bill Hunt and Dr. Robert Benjamin became part of the defense team prior to trial in September 2013. Furthermore, Richard Franklin, trial counsel, requested expert assistance merely 6 days prior to voir dire. Effectual preparations, understanding of the facts and a defensive trial strategy are highly unlikely to occur in the time frame of just 6 days between Langrum II, Franklin, Hunt and Dr. Benjamin.

The fact that Franklin waited 6 days before trial to file pretrial motions to request funding for expert assistance, makes obvious the lack of preparation into any assistance on behalf of Langrum II. Franklin was appointed October 4, 2011 and did not file the Omnibus Pretrial Motion until September 3, 2013. Bill Hunt's activety report does not appear in trial counsel's file. In fact, within trial counsel's file, no notes or memoranda of interviews, prospective witness lists, memoranda of investigative objectives, or any other item indicative of an investigation can be found.

B. REASONABLE JURISTS CAN DEBATE WHETHER MR. LANGRUM II WAS ENTITLED TO RELIEF.

In view of the fact that the District Court believes Langrum II could not have discovered Hunt nor Dr. Benjamin until filing a state habeas corpus adopts a new construction of the Sixth Amendment to have counsel during criminal proceedings. App.C6-C7. Both Hunt's and Dr. Benjamin's professional helping hand could have provided indispensable information and evidence to not only cast doubt but undisputably demonstrate falsehoods proffered by the State during their case in cheif. For example, the leaning into the vehicle-testified to by Sophia Dorian App.D2; the car chases testified to by Officer Barrett, App.D3; also the collection of evidence affirmed by Officer Barrett, App.D3.

1. THE UNDERLYING CONSTITUTIONAL CLAIMS HAVE MERIT.

In Ake v. Oklahoma, 470 U.S. 68(1985), the Supreme Court explained that due process requires access to raw materials integral to the building of an effective defense. While the State need not "purchase for an indigent defendant all the assistance that his wealthier counterparts might buy, it must provide him the basic tools to present his defense within our adversarial system."

Here, Langrum II has shown the lack of preparation by trial counsel regarding evidence, testimony and strategy. And the record does not support the Fifth Circuit's deferment to the District Court's ruling, along with the State Court's Findings, Conclusions and Recommendation. The trial court credits Franklin with obtaining professional services from Hunt and Dr. Benjamin to assist in Langrum II's defense. The District Court ruled that Langrum II could not have, through due diligence, discovered Hunt nor Benjamin until after filing an appeal to the Court of Criminal Appeals about the very issue of not having assistance from either of their professions. However, this finding is belied by counsel's statements within trial counsel's affidavit. "Bill Hunt was the appointed investigator in this case. He had numerous conversations with the Applicant." App.D6.

Due to counsel's delayed and ineffectual efforts to locate witnesses, no evidence was presented nor was the State's case put to any adversarial testing. In United States v. Cronic, 466 U.S. 648(1984), the Court carved out a narrow exception to Strickland v. Washington, 104 S.Ct. 2052(1984), a general rule that a defendant must demonstrate prejudice: a showing of prejudice is not necessary if there are "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." Circumstances which would warrant a presumption of prejudice from counsel's ineffectiveness are those where "the adversary process itself is rendered presumptively unreliable by the circumstances."

II. THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER REASONABLE JURISTS COULD DISAGREE ON A TRIAL ATTORNEY OBSTRUCTING AEDPA'S ONE-YEAR STATUTE OF LIMITATIONS.

The trial case file was and is decisive evidence that was not freely accessible to Langrum II. After going through the proper channels to file a grievance, Langrum II recieved the trial case file from trial attorney and Bill Hays, the grievance investigator, on April 29, 2016. Without further discovery, nothing else can be known about why trial counsel withheld the requested case file prior to the grievance process being brought to his attention.

A. REASONABLE JURISTS CAN DEBATE WHETHER MR. LANGRUM II WAS ENTITLED TO EQUITABLE TOLLING UNDER 28 §2254(B)(ii).

Langrum II requested the trial case file on May 26, 2015, prior to the date the conviction became final. However, there was not a response from trial counsel until Bill Hays, the Chief Disciplinary Investigator, on April 29, 2016. The assessment of the trial case file weighed heavily as to combat "strategic decisions" by trial counsel. Without the trial case file Langrum II nor the state court would have been positioned, in the record, to answer why decisions were made to go with or without certain actions.

1. THE UNDERLYING CONSTITUTIONAL CLAIMS HAVE MERIT.

Under 28 §2254 (B)(ii) circumstances exist that render such process ineffective to protect the rights of the applicant. Richard Franklin was appointed on October 4, 2011, with protecting the rights of Langrum II. There does not exist within the trial case file any signal of an investigation nor does the trial transcripts reveal a vigorous defense to protect the rights of Langrum II. The delay of providing Langrum II withthe trial case file furthers the time Langrum II spent unprotected, due to trial counsel's deficient wherewithal for Langrum II.

"equity looks through superficial fictions and acts on facts, giving them controlling effect; equity looks to substance and not the shadow, to the spirit and not the letter; it seeks justice rather than than technicality, truth rather than evasion, common sense rather than quibbling, and abhors technical rules and restrictions." Barr v. Thompson, 350 S.W.2d 36(Te.Civ.App.-Dallas 1961).

Trial counsel had impeachment evidence available during trial and refused to make any practical use of the impeachment evidence. Without an evidentary hearing, there is not a strategic reasoning in the record from trial counsel. Additionally, trial counsel was unaware of the facts surrounding car and foot chases, which contributed to being ineffective in the defense of Langrum II's constitutional rights. The Fith Circuit's procedural ruling alleviates the underlying constitutional rights trial counsel rebuffed to protect.

Consistently the professinal norms are to impeach a witness when that witness is one of a few against ones' client. Contrary to the lower courts ruling, the deficient performance was in plain sight undisputedly within the record. Trial counsel's affidavit states "The inconsistences were pointed out to the jury in the best way possible." App.D6. However, without a fully informed investigation or abandoning an investigation at an unreasonable juncture can make a fully informed decision with respect to trial strategy impossible. Wiggins v. Smith, 123 S.Ct. 2527 (2003).

Trial counsel admits that he has "no idea" what the complaint is. App.D6. However, with regards to the foot and car chases a contradictory depiction is broadcast between the police report and trial testimony. This impeachment evidence was available to and ignored by trial counsel. There is not a trial strategy that would justify allowing this testimony to go unimpeached by trial counsel.

Furthermore, the State admitted to the use of an extraneous offense. RR3:5. However, without true opposition a ruling, not established within record, was upheld for the State. This evidence was the foremost of the State's case-in-cheif. In Feldman v. Thaler, 695 F.3d 372(5thCir.2012), the CCA conceded that "a rational jury could have found that the murders did not occur during the same criminal transaction, reasoning that the evidence showed a geographic and temporal gap between the two killings." That same court determined that a rational jury had to conclude that Feldman committed the murders "pursuant to the same scheme or course of conduct." In Langrum II's case there is not an established scheme nor a continuous course of conduct. The use of the extraneous offense was detrimental and delivered Langrum II an unfair trial and biased the jury against Langrum II.

B. THE FIFTH CIRCUIT DENIED MR. LANGRUM II ANY OPPORTUINY TO DEVELOP FACTS WITH IT'S PROCEDURAL BAR.

The trial case file should have revealed trial counsel's innermost thoughts about the case. As such, it was absolutely necessary for Langrum II to review and analyze the trial case file prior to filing an adequate habeas corpus. Minus the trial

case file the entirety of Langrum II's habeas petition would have been speculative. However, with the trial case file in hand, Langrum II was situated to unveil trial counsel's thought processes concerning the defense of the case.

Trial counsel had refused to disclose 1)the trial case file; and 2)the names of the private investigator or DNA expert, prior to the grivance process and Langrum II's State habeas petition, respectively. The factual basis of why trial counsel declined to utilize the available impeachment evidence is made clear through the negligent information contained within the case file. In McClesky v. Kemp, 107 S.Ct. 1756(1987), that Court "declined to assume that what is unexplained is invidious." When the lower courts denied an evidentary hearing it concealed the record from being fully developed. The attorney-client privilege is held by the client and not the attorney. See In re Grand Jury Proceedings, 43 F.3d 966(5thCir.1994)

The purpose of the work product privilege is to further "the interests of clients and the cause of justice" by shielding the lawyer's mental processes from his adversary. Hickman v. Taylor, 67 S.Ct. 385(1947). In Langrum II's case there is a trial attorney whom shields his mental processes from his client 1)prior to trial; 2)during trial; and 3)post conviction. The importance of the trial case file weighs so profoundly that there is protection against the adversary being able to discover its contents within our adversarial system. However, that protection does not extend to the attorney inside the bounds of the legal system. United States v. Nobles, 95 S.Ct. 2160(1975), made the work product privilege fully applicable to criminal cases. However, this trial case file was prepared with the "intentions" to defend Langrum II against the charge of capital murder, and yet trial counsel refused to provide the trial case file until Bill Hays contacted trial counsel about the grievance Langrum II filed.

The Fifth Circuit's order frustrates the purpose of Martinez v. Ryan, 132 S.Ct. 1309(2012), which reflect this Court's recognition that state inmates can arrive at their federal habeas proceeding having been deprived of any prior opportuinty to develop ineffective assistance of counsel claims and, as a corollary,

to enforce the Sixth Amendment right to counsel.

"The Texas court itself recognized the need for extra-record evidence to substantiate an IAC claim." Martinez v. Ryan, 132 S.Ct. 1309(2012). However, a procedural bar was utilized to excuse the merits of ground one (failure to subject the State's case to meaningful adversarial testing with available impeachment evidence) and ground four (failure to properly object to admission of an extraeous offense). In Trevino v. Thaler, 133 S.Ct. 1911 (2013), the Court stated "Failure to consider a [state habeas lawyer's ineffectiveness as] a potential cause for excusing a procedural default will deprive the defendant of any opportuinty at all for review of an [IAC] claim."

"Ineffective assistance claims often depend on evidence outside the trialrecord." Martinez v. Ryan, 132 S.Ct. 1309(2012). As such, Langrum II sought the inner thoughts of trial appointed counsel through the trial case file. Due to the delay of trial appointed counsel, the procedural bar prevents the Fifth Circuit from reaching the merits of the IAC claims.

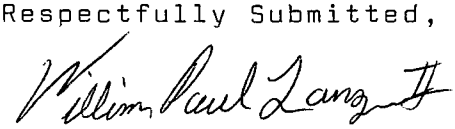
Trial counsel withheld the DNA expert and private investigator, until Langrum II complains to the Courts, which devastates the Sixth Amendment right to counsel that was necessary to develop the evidence to combat the State's case.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Mr. Langrum II prays that this Court grant a writ of certiorari to resolve the Questions Presented.

August 20,2021

Respectfully Submitted,



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