

No. 21-5700

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Stanley Renard Tilley Sr. — PETITIONER
(Your Name)

Bobby Lumpkin, Director, Texas Department of Criminal
Justice, Correctional Institutions Division — ^{VS} RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stanley Renard Tilley, Sr.

(Your Name)

Wainwright Unit - 2665 Prison Road #1

(Address)

Lovelady, Texas 75851

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Mr. Tilley alleged that he is actual innocent, and his trial counsel was ineffective for failing to call expert witnesses as requested by Mr. Tilley, nor did he visit the crime scene in a "Capital Case" along with other errors. The only evidence linking Tilley to Thirkill's murder was Anderson's testimony, that was contrary to the physical evidence presented by the state at trial. Tilley cites two affidavits of far more experience experts in forensic pathology that refuted the testimony of witnesses who were never call to speak on his behalf at his trial, who gave credible (affidavits) that the keystone witness (Anderson) committed the acts for which he (Tilley) was convicted and sentenced. (The case thus presents the following questions).

Whether Tilley has met the actual innocence standard for overcoming procedural default in (Schlup v. Delo, 513 U.S.298,315-16, 324, 327-29 (1995))... House v. Bell, 547 U.S. 518 (2006) but also was he entitle to immediate release under the (Herrera Standard)...and whether Tilley's constitutional rights to the effective assistance of counsel defined in Strickland V. Washington, 466 U.S. 668 was violated, and whether the judgement of the Fifth Circuit adopting the District Court opinion and refusing to review his merits and set aside his sentence or grant a certiorari was contrary to, or involved an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States, within the meaning of 28 U.S.C. §2254(d)(1) and §2244(b)(2)(B)(ii).

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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 _____ 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 June 22, 2021.

☒ 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: _____, 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. § 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).

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, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval force, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

U.S. CONST., AMEND. VI

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

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.

STATEMENT OF THE CASE

Mr. Tilley - Petitioner, was convicted of the murder of Toliver Thirkill. According to Lester Anderson, the keystone witness for the state that was on state parole and federal supervise release at the time of the crime. He (Anderson) admitted under oath that he was addictive to crack cocaine and shooting up cocaine for over a decade.

The prosecutor's opening statement at Tilley's trial, was we have no evidence on this man (Tilley), only an eyewitness and we're going to try this case anyway.

Lester Anderson alleged that he, Mr. Tilley and Tolliver Thirkill met in a south Tyler ice cream parlor to plan a drug deal. Tilley arrived at the meeting in a green vehicle and got into the back seat of Lester Anderson's black tahoe. Thirkill rode in the front passenger seat, and Anderson sat behind the steering wheel. They rode towards Jacksonville, after they crossed the Cherokee County line, Anderson turned right onto a country road.

Tilley drew a gun, pointed it at Thirkill and told him to put his hands on the dashboard. Anderson slowed to a stop at the "T" in the road and asked Tilley which way to turn. Tilley said, take a right. Tilley then shot Thirkill in the jaw and he (Thirkill) fell out of the passenger side door backwards. Tilley had also left the vehicle. Anderson sped away leaving Tilley and Thirkill's body on the roadside.

Tilley fired six times at Anderson in the fleeing black Tahoe. Anderson saw that he was being pursued by the green car that had brought Tilley to the meeting in Tyler. Two witnesses miles from the crime scene testified that they had seen the Tahoe pursued by the green car, similar in appearance to the car owned by Tilley's girlfriend, but none of the witnesses identified anyone inside the green

car in the chase, nor at the crime scene. No witnesses positively identified the green car. There was no records of the license plate number, and no other unique identifiers.

Anderson drove the SUV from the crime scene in Jacksonville, Texas to his parents house in Neches, Texas. He (Anderson) did not turn the SUV over to the investigators until four hours after the crime. The investigators found no fingerprints or DNA inside of Anderson's vehicle. Not even his own, nor the victim (Thirkill). It was no physical evidence against Mr. Tilley at the crime scene, nor in Anderson's vehicle to confirm the allegation.

The state's medical expert testified that Thirkill was shot twice in the right side of his lower back, and he fell out of the passenger door forward. His final findings was the bullets came from the backseat behind the driver.

On February 11, 2010, Tilley was sentenced to Life without parole for the offense of Capital Murder. He then filed a motion for a new trial, which was denied without a hearing. Tilley filed a Direct Appeal, which was denied April 29, 2011. See *Tilley v. State*, 2011 WL 1689090 (Tex. App. - Tyler 2011). The Texas Court of Criminal Appeals refused Tilley's petition for Discretionary review on October 19, 2011.

Tilley then filed a Pro Se Actual Innocence State Habeas application with two attached affidavits from far more experienced experts that refuted the testimony of state witnesses regarding the injuries suffered by the victim and the trajectory of the bullets. On November 30, 2015, and the state habeas court held a hearing on the application on May 19, 2017. Subsequently, on March 21, 2018, the Texas Court of Criminal Appeals denied Tilley's habeas application, without a written order on the findings of the trial court after the hearing. Tilley then filed a federal habeas petition in the Eastern

District of Texas on March 21, 2018..That was dismissed September 14, 2020. Tilley then filed an appeal to the Fifth Circuit October 5, 2020, that was denied on the ruling of the District Court June 22, 2021, without reviewing the merits. Tilley proclaim he is innocent of Thirkill's murder, nor was he present at the crime scene.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit is unreasonable to clearly established Federal law, as determined by the Supreme Court of the United States. Standard of Schlup, Herrera and Strickland. Warrants this Court's attention.

The Fifth Circuit adopted the District Court opinion and denied Mr. Tilley's habeas petition without reviewing the merits. The District Court dismissed the petition on the basis that it was untimely under 28 U.S.C.S. §2244(d). Petitioner's habeas petition was improperly denied on that basis that was untimely under 28 U.S.C.S. §2244(d) because the petitioner had presented a credible claim of actual innocence that entitled tolling of the one year limitations period under §2244(d) and review of his habeas petition on the merits. See *Cleveland v. Bradshaw*, 693 F. 3d 626; 2012 U.S. App. Lexis 18948; 2012 Fed. App. 0314 p (6th Cir. 2012)(prejudice review).

Petitioner maintains that his petition is timely because he possesses newly discovered evidence that he could not obtain prior to the one year deadline. Petitioner cites two affidavits of recognized experts in forensic pathology that refuted the testimony of state witnesses regarding the injuries suffered by the victim and the trajectory of the bullets.

See Exhibit A, curriculum vitae for General Dr. John Plunkett, M.D.

See Exhibit B, curriculum vitae for Dr. Harry J. Bonnell, M.D.

Mr. Tilley - Petitioner has made the requisite showing of innocence "to excuse facial untimeliness of his petition" and allow federal courts to review ineffective assistance of counsel at trial, ineffective assistance of counsel on his first appeal, prosecutorial misconduct, and police misconduct claims. Mr. Tilley produced witnesses who were never called to speak on his behalf at his trial and who gave credible affidavits that someone other than Tilley committed the acts for which

he was convicted and sentenced...which conclude that it is more likely than not that no reasonable juror hearing all of the evidence Mr. Tilley presented in federal court would vote to convict him under the beyond-a-reasonable-doubt standard. Quoting Schlup v. Delo, 513 U.S. 298, 329 (1995). (To invoke the miscarriage of justice exception to AEDPA's statute of limitations, a petitioner must show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence. (quoting Schlup, 513 U.S. at 327). See Vosgien v. Persson, 742 F. 3d 1131-34, 1136 (9th Circuit, 2014) Larsen v. Soto, 742 F.3d 1083, 1086, 1096 (9th Circuit 2013).

See 28 U.S.C. §2254 Rule 4. Focusing on the merits of a petitioner's actual innocence claim and taking account of delay in that context, rather than treating timelines as a threshold inquiry, is tuned to the rational underlying the miscarriage of justice exception - i.e. ensuring "that federal constitution errors do not result in the incarceration of innocent person." Herrera v. Collins, 506 U.S. at 404 (1993).

The lower court argued that the affidavits is not new by stating the record shows that the jury heard testimony concerning whether a bullet hit the victim in the face, how the victim fell out of the truck, whether the victim was sitting up during the first shot, testimony regarding bullet trajectory, "and how there were multiple "hypotheticals" to achieve an upwards trajectory".

Mr. Tilley's trial counsel asked the state expert "hypothetically questions" and the "state expert answered with "hypothetically" before answering the questions"... The definition to hypothetically is unproved and untested. Dr. Plunkett's affidavit summed up the hypothetically questions with his conclusion after he reviewed and analyzed the entire transcript and exhibits, to include his "conclusion" of the autopsy performed on Toliver Thirkill...

Dr. Bonnell's affidavit summed up the hypothetical questions with "findings" after he reviewed and analyzed the entire transcript and exhibits to include his "findings" of the autopsy performed on Toliver Thirkill. This is newly discovered evidence that was not available at trial.

The states expert Dr. Barnard final findings was "the bullets came from the "back seat" behind the driver", and Mr. Tilley was found guilty of Capital Murder and sentenced to life without parole...General, Dr. Plunkett and Dr. Bonnell's final conclusion and findings were the bullets came from "the driver side "front seat" occupant shot Mr. Thirkill" as he (Thirkill) was exiting the vehicle face first... General, Dr. Plunkett and Dr. Bonnell is far more experience than the states expert...Mr. Tilley produced witness who were never called to speak on his behalf at his trial and gave credible affidavits that someone other than Mr. Tilley committed the acts for which he was convicted and sentenced...general, Dr. Plunkett and Dr. Bonnell and their final conclusion and findings is newly discovered evidence that was not available at trial. See House v. Bell, 547 U.S. 518, 165 L. Ed. 2d 1, 126, S. Ct. 2064 (2006); Schlup v. Delo, 513 U.S. 298, 326-327, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995); Herrera v. Collins 506 U.S. 390, 400, 122 L. Ed. 2d 203 (1993);

In this case, the only evidence linking Tilley to Thirkill's murder was Anderson's testimony, and Anderson's testimony was contrary to the physical evidence presented by the state at trial. there was no physical evidence linking Tilley to the murder of Toliver Thirkill. No DNA, no fingerprints, no fiber evidence was recovered from the crime scene or in Anderson's vehicle where the crime occurred. The green car at the crime scene could not be positively identified. There was no record of the license plate number, and no other unique identifiers. In sum, all of the physical evidence was exculpatory.

See *Quartarro v. Hanslmaier*, 28 F. Supp. 2d 749 (E.D.N.Y. 1998).

Mr. Tilley has been pursuing his rights diligently, his federal habeas petition was the culmination of his unbroken efforts over many years to prove his innocence using evidence he knew he could exonerate him but which his attorney incompetently failed to present at trial... Mr. Tilley requested his state appointed attorney to hire an forensic pathologist to examine all the evidence presented by the state before trial to prove his innocence. Mr. Tilley's attorney denied his request because Tilley nor his family had the funds requested to hire a forensic pathologist and that was the end of that conversation. Mr. Tilley's trial attorney did not visit the crime scene, nor did he investigate Anderson's vehicle where the crime occurred. See *Strickland v. Washington*, 466 U.S. 668, 691, 80 L. Ed. 2d 674 (1984); *Towns v. Smith*, 395 F.3d 251, 259 (6th Cir. 2005); *Roger v. Israel*, 746 F. 2d 1288 (7th Cir. 1984); *Miller v. Anderson*, 255 F. 3d 455 (7th Cir. 2001); and *Burr v. Lassiter*, 513 Fed. Appx., 327, 346 (4th Cir. 2013)

Mr. Tilley's defense counsel neither called a medical expert to rebut the prosecutors expert, nor consulted an expert prior to trial. Consultation with an expert was crucial in Tilley's case for two reasons. #1, Counsel had neither the education nor the experience to evaluate the evidence and make for himself a reasonable informed determination as to whether an expert should be consulted or called to the stand; and #2, there was an obvious common sense mismatch between the physical evidence and the allegations such that a "reasonably professional attorney" would have consulted and been ready to call an expert to address the inconsistencies.

Moreover, the fact remains that in the absence of a defense expert to challenge the states expert findings,

it was all assured that Dr. Barnard's testimony would carry great weight with the jury. See, the state habeas hearing on the 19th day of May, 2017, transcript page 51; 8-17, where trial attorney (Sten M. Langsjoen) admitted under oath that he did not call an expert nor did he consult with one concerning the trajectory before trial. See Pavel v. Hollins, 261 F.3d 210 (2d Cir. 2001).

Mr. Tilley contacted numerous forensic pathologists while being incarcerated and indigent through letters between 2011 and the start of Dr. Bonnell's and Dr. Plunkett's examinations in 2012. Both experts agreed to examine all Tilley's trial documents that took time and efforts to receive all the requested materials from courts while being indigent.

Texas Department of Criminal Justice System do not pay the residence to work, nor do T.D.C.J. allow residence to make copies in the law library of original documents. to forward to organizations. Which each step is time consuming without income or an attorney's outside assistance to speed up the process with phones, internet, copy machines and access to court records.

Dr. John Plunkett, M.D. affidavit indicates Mr. Tilley pursuing his rights diligently at #3 A. letters from Mr. Tilley dated on receiving on April 10, May 3, June 14, August 11, and November 26, 2012; February 27 and May 16, 2013; and October 13 and December 12, 2014;... The dates indicates it took Mr. Tilley two and a half years to receive an affidavit from Dr. Plunkett... It took years to locate witnesses scattered across the country, gather declarations, and file Tilley's petition is not so lengthy a time as to be unreasonable concerning the condition. See Larsen v. Soto, 742 F. 3d 1083, 1086, 1096 (9th Circuit 2013).

These cases illustrate the fact that the Fifth Circuit Court of Appeals is out of step with other circuits in

its considerations of the Schlup v. Delo, 513 U.S. 298, 329 (1995). Herrera v. Collins, 506 U.S. at 404 (1993) and Strickland v. Washington, 466 U.S. 668, 691, 80 L. Ed. 2d 674 (1984), prejudine preng.

The decision of the Fifth Circuit is in conflict with the decisions of other circuits.

Certiorari: should be granted to correct this error.

CONCLUSION

For these reason, a Writ of Certiorari should issue to review the judgement and opinion of the Fifth Circuit Court of Appeals

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Stanley Alley

Date: August, 22, 2021