

21-6620

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

TORMU E. PRALL,

PETITIONER,

VS.

ATTORNEY GENERAL NEW JERSEY,
ADMINISTRATOR NEW JERSEY STATE PRISON,

RESPONDENTS.

Supreme Court, U.S.
FILED

NOV 30 2021

OFFICE OF THE CLERK

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

TORMU E. PRALL
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NEW JERSEY STATE PRISON
P.O. BOX 861
TRENTON, NJ 08625

QUESTIONS PRESENTED

1). While incarcerated at the county jail between October 2008 and February 04, 2010, state witnesses Jeneya Richardson and Kimberly Meadows wrote the petitioner to disclose being under duress to frame him as the guilty party. They warned of the perjured testimony the prosecution would have them suborn against him, if he did not cop out to the twenty nine years plea that the government would offer. Upon learning the letters were in his possession, agents of the county jail did not let the petitioner to travel with his belongings nor shipped them to the institution he was transferred to on February 05, 2010. Months later, the petitioner filed a civil lawsuit in state court asking the government to turn over his documents. In a April 12, 2010 certification, the First Assistant Prosecutor Janetta D. Marbrey repudiated the county jail and her office having access to the letters.

Three weeks before the criminal trial, defense counsel moved to compel. In response, the Assistant Prosecutor Lewis J. Korngut took the position that the belongings were at the county jail and defense counsel could go get them. Skeptical that the letters had been removed, hidden, and would be nowhere to be found, the petitioner and his attorney, requested the state trial judge to have the prosecution and/or its agents bring the

belongings to the courtroom so that they could be inventoried in front of the judge. This way, there would be a chain of custody and the petitioner and defense counsel could put it on the record if the letters were missing. The state judge wanted the petitioner to trust that the prosecution didn't tamper with his belongings, even as state witness Jeneya Richardson, attempted to introduce a letter other than the one she wrote the petitioner in the county jail. **Whether the steps the petitioner proposed for regaining access to those letters are a "watershed rule implicating the fundamental fairness and accuracy of the criminal proceeding" Whorton v. Bockting, 548 U.S. 406, 416 (2007)?**

2). None of the state witnesses was there when the deceased was buried. In the absence of any testimony to that effect, the prosecutor, in summation, declared that the petitioner did not attend the funeral for his brother and asked what innocent person acts like this. Not only did the remark inflame the passion of the jurors, it assured them that his belief was based upon something he knew from outside the record. **Was this fundamentally unfair prosecutorial conduct within the meaning of Parker v. Mathews, 567 U.S. 37, 45 (2012)?**

3). On September 25, 2007, there was an arson at 206 Wayne Avenue in Trenton, New Jersey, with the victims inside. State witness Jessie Harley testified that when she went to her

residence on Klagg Avenue a few days later to see if the petitioner was there, she found the shirt he had been wearing the night before the fire. This time, the shirt had dried blood and skin smeared across the front. She threw the shirt away because she was scared of him. Being that a scary person would not have, after receiving news of the fire, went looking for the petitioner without any law enforcement escort and assistance, **was it a due process violation for the prosecutor to present or fail to correct the factual impossibility Jessie Harley testified to?**

4). Upon it becoming clear that state witness Jessie Harley would testify that the petitioner asked her to drive him to buy some gas so he can set his brother on fire, the defense requested the test results of the fluid found in the house. Since gas was chemically ruled out, the prosecution withheld that information during discovery, so that Jessie Harley, could perpetrate the fraud that the petitioner was contemplating to murder his brother with gas. When the truth finally came out, it arrived via Detective Gary Wasko, who was the last state witness the jurors heard from. The state trial judge was mind boggled about why so much time was wasted on gas if it was not the accelerant used. In summation, the prosecutor urged the jury to infer that the petitioner used a different flammable liquid because he had a change of heart. **Was it a violation of due**

process for the prosecution to play upon the jury in such a artful, clever and insidious way?

5). Through its own investigation, the prosecution learned that the brother of the petitioner had just recently been released from jail and didn't have a source of income to pay the bills. On cross-examination, defense counsel got state witness Kimberly Meadows to admit to this undisputed fact that the prosecution was aware of all along. Yet to have a motive, the prosecution put forth the myth that the petitioner argued with and killed his brother for telling him he couldn't stay at the house their mother owned without contributing to the expenses. Pursuing the contrary position would have erased the notion that the petitioner was in a fit of rage over rent/utilities or anything else. **Was this fictitious narrative fundamentally unfair?**

6). In 2007, detectives were given judicial authorization to access the logs of all calls the petitioner made from and received on his cellphone. Six years later, the prosecution coached state witness Jessie Harley to testify that the petitioner did not have a cellphone and always called from a payphone. At 7:28 a.m. and 7:29 a.m., the morning of the fire, someone left two voicemail messages asking her to pick up because he or she needed to talk to her. As part of the plan to frame the petitioner, Jessie Harley identified the petitioner, who had a cell phone and did not have to call from a payphone,

as the person on the voicemail. **Was it fundamentally unfair for the prosecution to use evidence it knew would create a misimpression?**

7). Once an indigent defendant in a criminal case has been assigned a public defender on his or her appeal, *State v. Welch*, 225 U.S. 215 (2016) requires that all pro se papers the defendant file with that court must be submitted through the public defender. The petitioner gave prison officials an envelope with Petition for Certification inside addressed to the public defender he was assigned. Prison officials provided him receipt that he gave them this mail. The Petition for Certification did not reach its destination. **Under *Davila v. Davis*, 137 S.Ct. 2058, 2065 (2017), was the interference with outgoing mail by prison officials the blame for the default?**

8). Procedural irregularities at the trial level are prejudicial in ways that remain unseen to anyone outside the jury. The secrecy of jury deliberations pose an impenetrable barrier to the ability of courts to confidently conclude that whatever violation an appellant is complaining about did not affect the verdict reached. This is conclusively proven where the findings of harmless error in cases of people later determined to be innocent undermine faith in the court's determination that evidence of guilt in a particular case was overwhelming. By

empowering judges to substitute their personal judgment for that of the jury, the harmless error removes the inestimable safeguard, that the fate of the accused be adjudicated by the group of his or her peers. **Does the whole scheme of American government, as was articulated by Justice Douglas in Wolff v. McDonnell, 418 U.S. 539, 596 (1974), reflect an institutionalized mistrust of any unchecked and unbalanced power over essential liberties?**

9). Ninety days after his July 18, 2008 indictment, three officers picked the petitioner up from the county jail and transferred him to the local police precinct. On the way, the three officers pulled over on the side of the road, stuck foreign plastic about an inch in his rectum, stuffed a sock in his mouth, and suffocated him with either garbage bags or plastic typewriter covers. They informed the petitioner, who was handcuffed and shackled in the back of their vehicle, that he would be interrogated when he arrived at the police station. Bodily harm was threatened if he did not regurgitate the details they fed him, which included the lies that he burned his hands and lips in the fire and a hospital in New York treated the wounds with skin graft surgery.

None of these three transporting officers advised the petitioner of his Miranda rights, because they, as part of the state, had prearranged to confront him while he was unassisted by counsel.

At the police station, the petitioner was placed in a small interview room and chained to a bench. Two detectives subsequently entered and administered the Miranda warnings for the first time. The petitioner signed the waiver form, responded to his interrogators and submitted to them manufacturing photographs of him as the three transporting officers had instructed. **Did violation of Miranda rights during the trip to the police station taint the interrogation that took place thereafter?**

10). A hearing was conducted to determine the voluntariness of the statement the petitioner gave in a videotaped interrogation. The state failed to present at least one of the three transporting officers in support of voluntariness. None of them appeared so that they could be cross-examined. In ascertaining the ultimate issue of fact, the state trial judge proffered an explanation for the officers, considered the accuracy of the statement, and concluded that if the petitioner testified, the prosecution could use the words forced out his mouth in rebuttal.

Deference is accorded to the trial judge due to his ability to hear the witnesses live, observe their demeanor, and smell the smoke of the battle. Pursuant to both *Lego v. Twomey*, 404 U.S. 477, 485 (1972) and *Colorado v. Connelly*, 479 U.S. 157,

167 (1986), the state trial judge was not supposed to concern himself whether the statement was true or false. Sure that he had been stripped of the free choice to admit, deny, or refuse to answer, the petitioner surrendered his right to take the stand. **Did the decision of the state trial judge violate due process and deny the petitioner of the opportunity to confront the evidence and witnesses against him?**

11). could a coerced or involuntary statement be impeached by prosecutors?

12). "Various kinds of state-sponsored torture and abuse" can be "ingeniously designed" not to leave "permanent injury" or "telltale marks." Hudson v. McMillian, 503 U.S. 1, 13-14 (1992) (Opinion of Blackmun). Police, among other things, sodomized the petitioner in the same way one partner pleasures another, to extract a statement from and to manufacture fire-scarred photographs of him that they needed. **Did the petitioner had to have a cut, abrasion, bruise, disfigurement, or a rupture anus to substantiate that he was sexually assaulted?**

13). Counsel was totally absent and prevented from assisting the petitioner during the critical stage of the deliberation elicitation and interrogation. Both of the prosecutors for the state relied heavily on the manufactured photographs depicting burns to the lips and hands and the compelled statement that arose therefrom, as a central theme. The state judge presiding

over the proceeding ruled that the jury would be allowed to view the videotape interrogation if the petitioner took the stand or attempted to put on any defense. Rights and privileges were irretrievably lost and waived as a result. The violation had an adverse impact on the quality and effectiveness of the legal representation received. **Was this error a structural one?**

14). "Counsel" is "required at every stage of a criminal proceeding where substantial rights of the criminal accused may be affected." *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). "No person may be imprisoned for" an "offense" or "felony, unless he was represented by counsel at trial." *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). "To deprive a person of counsel during period prior to trial may be more damaging than denial of counsel during trial itself." *Maine v. Moulton*, 474 U.S. 159, 170 (1985). **Can defendants in the petitioner's place be convicted and sentenced?**

15). On the morning of the fire, state witness Paul Bethea saw the petitioner staring at the crime scene from one block away. Due to safety concerns, the petitioner went into hiding after a while. Over that period, he was arrested, fingerprinted, had his mugshots taken, and released by the police in Boston, Massachusetts. In September 2008, the petitioner was apprehended in Connecticut, and extradited to New Jersey approximately a month later. Up to that date, Paul Bethea, Boston Police booking

records, the sheriffs involved in the extradition, and the footage of his October 21, 2008 videotaped interrogation, did not report or notice severe burns to his lips and hands that the detectives in this case manufactured photographs to depict. **Was it fundamentally unfair for the judge and prosecution to invite the jury to rely on these forged images?**

16). Despite state witness Paul Bethea who saw the petitioner on the morning of the fire, the Boston Police booking records, the Sheriffs that extradited the petitioner from Connecticut to New Jersey, and his videotaped interrogation, conclusively refuting that he had injuries, the state was the mastermind behind its witness Jessie Harley inventing the story of finding a shirt with blood and dried skin that belonged to the petitioner. **Did this baseless and unfounded testimony by Jessie affect or have an injurious impact on the judgment of the jury?**

17). While questioning state witnesses Jeneya Richardson, Jessie Harley, Kimberly Meadows, and Paul Bethea, the prosecutor asked did the petitioner ever reach out to them and say that he wasn't responsible for the arson. Then during summation, the prosecutor asserted that the petitioner did not contact them (the witnesses) under the consciousness of guilt. The petitioner had an innocent explanation for not being heard and seen from, for assuming a fake name, and for declining to provide the state witnesses an exculpatory account. He did not testify to avoid

the prosecution using the involuntary statement, the police coerced from him, to attack his credibility. **Did this tactic by the prosecution prejudice the petitioner and place him at an unfair disadvantage?**

18). Do the principles of due process, as laid down in *United States v. Russell*, 411 U.S. 423, 432 (1973), absolutely bar the means by which the conviction of the petitioner was obtained?

19). Was the prosecution's conduct so egregious in the context of the trial as to shock the conscience?

20). Is this case what *Betterman v. Montana*, 136 S.Ct. 1609, 1613 (2016) considers unfair prosecutorial misconduct?

21). In its one page order, the United States Court of Appeals for the Third Circuit characterized the conduct, which "render[ed] the trial unfair or unreliable vehicle for determining guilt or innocence," *Johnson v. United States*, 520 U.S. 461, 469 (1997), as violation of several state evidentiary laws, that are not cognizable claims in federal habeas. **Is that true?**

22). There is no better precaution against judicial mistakes than setting out accurately and adequately of the material facts as well as the point to be decided. Rather than identify the applicable United States Supreme Court precedents and determine whether they resolved the federal claims, the state appellate court simply asserted that the arguments that the petitioner

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raised in his pro se supplemental brief were without sufficient merit to warrant discussion in a written opinion. **Was that adjudication unreasonable?**

23). In this case, the state failed to provide the petitioner with the full panoply of protections that our constitution affords criminal defendants. **Is the 95 years prison sentence he received cruel and unusual?**

24). At every stage of the proceeding, the state rode roughshod over the rights that must be observed before a criminal defendant can be validly convicted and punished by imprisonment. **Does that render his resulting 95 years sentence fundamentally unfair?**

25). Did cumulative effect of "deliberate and especially egregious errors of the trial type," and the "pattern of prosecutorial misconduct", seriously "affect[ed] the integrity of the proceeding, *Brecht v. Abrahamson*, 507 U.S. 619, 638, n 9 (1993)?

26). Was the petitioner entitled to a Certificate of Appealability and success on the merits to guard against the extreme malfunctioning in the state criminal justice system?

27). Whether dismissal of the indictment with prejudice is the appropriate remedy for the violations that occurred?

LIST OF PARTIES

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

RELATED CASES

- State v. Prall, 231 N.J. 567 (2018).
Judgment entered January 31, 2018.
- Prall v. Attorney General New Jersey,
No. 18-cv-2614, U.S. District Court
for the District of New Jersey. Judgment
entered February 25, 2021.
- Prall v. Attorney General New Jersey,
No. 21-1526, U.S. Court of Appeals
for the Third Circuit. Judgment entered
August 03, 2021.
- Prall v. Attorney General New Jersey,
No. 21-1526, U.S. Court of Appeals
for the Third Circuit. Judgment entered
September 16, 2021.

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for the Third Circuit, dated August 03, 2021.

APPENDIX B: Decision of the United States District Court
for the District of New Jersey, dated February
25, 2021.

APPENDIX C: Order of the United States Court of Appeals
for the Third Circuit denying rehearing, dated
September 16, 2021.

OPINIONS BELOW

- [x] The opinion of the United States Court of Appeals appear at Appendix A to the petition and is unpublished.
- [x] The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

- [x] The date on which the United States Court of Appeals decided my case was August 03, 2021.
- [x] A timely petition for rehearing was denied by the United States Court of Appeals on September 16, 2021, and a copy of the order denying rehearing appears at Appendix C.

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

STATEMENT OF THE CASE

Petitioner, Tormu E. Prall, was convicted by the state of New Jersey of murder, attempted homicide, and aggravated arson. He was, at the age of 40, sentenced to an aggregate term of 95 years, eligible for parole after serving 62 years.

On direct appeal in state court, the petitioner's challenges, as relevant here, were: the prosecution manufactured six photographs of him to appear he had fire scarred lips and hands; advanced the bogus theory that he murdered his brother over their house bills; extorted a statement and the six manufactured photographs in the absence and without the help of counsel; pursued an summation designed primarily to elicit sympathy and emotional response; and had his ex-girlfriend Jessie Harley cook up testimony against the petitioner to win at any cost.

The state appellate court summarily rejected all arguments made in his pro se supplemental brief without any elaboration, but reversed his conviction on the admission of prejudicial evidence. The state filed a Petition for Certification to the New Jersey Supreme Court. The petitioner then prepared a Cross-Petition for Certification on the issues contained in his pro se supplemental appellate brief, put it in an envelope

addressed to his attorney, and gave it to his housing unit officer for mailing.

In New Jersey, the law is a pro se Cross-Petition of a defendant must be submitted by his or her attorney. The New Jersey Supreme Court reversed and reinstated the conviction. Afterward, the petitioner sought federal habeas corpus. The District Court entered an opinion and order on March 29, 2019 finding the claims unexhausted, and gave the petitioner 45 days to file a motion to stay while he tried to exhaust.

Meanwhile, the petitioner inquired his attorney about the pro se Cross-Petition that he gave to the housing unit officer for mailing. His attorney notified that he never received it. Armed with this information, the petitioner simultaneously requested the New Jersey Supreme Court to allow him to file a pro se Cross-Petition nunc pro tunc, and asked the District Court for reconsideration based on what his attorney told him. Both the New Jersey Supreme and the District Courts denied his motion. In dismissing the habeas corpus application, the District Court's exact words were the petitioner failed to explain why he did not just file the pro se document with the New Jersey Supreme.

But the petitioner had no new facts to believe circumstances changed from how his pro se supplemental brief was handled on direct appeal. Moreover, frustrating one of the two avenues

available for the petitioner to exhaust would still establish cause. The Third Circuit affirmed the District Court, and ruled that the claims lacked merit.

REASONS FOR GRANTING THE PETITION

Millions of defendants and prisoners throughout the nation need answers to the questions presented. Because they have to deal with the kind of questions repeatedly in endless criminal trials, the answers would clarify whatever uncertainty might exist.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: November 22, 2021