

ORIGINAL

21-7131

IN THE SUPREME COURT OF THE UNITED STATES

FILED
JAN 15 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

BOBBY RAY JONES

Petitioner,

vs.

WARDEN PHILLIP MICHELL

Respondent.

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

BOBBY RAY JONES
AIS#181984
1000 St. Clair Road
Springville, Al. 35146

QUESTIONS PRESENTED

WHETHER THE COURTS BELOW ERRED IN DENYING
JONES A CERTIFICATE OF APPEALABILITY TO REVIEW
THE COURTS ERRONEOUS AND CONTRARY APPLICATION
OF THIS COURT'S ACTUAL INNOCENCE JURISPRUDENCE
TO THE FACTS OF JONES CASE CONTRARY TO THE
TEACHINGS OF SLACK VS MCDANIEL, 529 U.S. 473 (2000)
AND SCHLUPI VS. DELO, 513 U.S. 298 (1995) ?

LIST OF PARTIES

Bobby Ray Jones, the Petitioner in this proceedings is an inmate proceeding Pro Se and serving a custodian sentence of Life at St. Clair Correctional Facility in Alabama.

The Respondent Phillip Mitchell is the Warden of St. Clair Correctional facility. The Respondent Steve Marshall is the Attorney General of the State of Alabama.

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Eleventh Circuit

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APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

McQuiggin v. Perkins, 569 U.S. 383 (2013)
Schlup v. Delo, 513 U.S. 298 (1993) ~
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STATUTES AND RULES

28 U.S.C § 2244(d)(1)(A)

OTHER

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 A 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[✓] is unpublished.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 B 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[✓] is unpublished.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[] is unpublished.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 September 1, 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: November 18, 2021, and a copy of the order denying rehearing appears at Appendix C.

[] 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

U.S. Const. Amend. XIV

U.S. Const. Amend. VIII

U.S. Const. Amend. VI

28 U.S.C. § 2244(d)(1)(A)

STATEMENT OF THE CASE

On November 7, 2007, a Marshall County Alabama grand jury indicted Jones on one count of Murder in violation of Ala. Code §13A-6-2(a)(1) (1975), for causing the death of Tonya Rene Minson by striking her with a Motor Vehicle.

On February 26, 2010, a jury found Jones guilty and on March 8, 2010 the trial court sentenced Jones to 111 years imprisonment. Although Jones initially appealed, the Alabama Court of Criminal Appeals dismissed the appeal on August 25, 2010.

On August 28, 2010, Jones filed a Motion for postconviction relief in the Marshall County Circuit Court. On April 19, 2011, the Circuit Court dismissed Jones claims as precluded, time barred and meritless. On Appeal of the denial of Jones's petition, the Alabama Court of Criminal Appeals affirmed in part and Reversed in part, holding that Jones 111 year sentence is illegal under the Habitual Offender Act, because Jones could only be sentenced to Life or Life Without Parole, and remanded with instructions..

The Circuit Court subsequently resentenced Jones to Life Without Parole. On August 24, 2002, on return to remand, the Alabama Court of Criminal Appeals affirmed the Court's judgment.

Jones on December 13, 2012, filed a second Rule 32 Petition, which was summarily dismissed, after protracted appellate procedures, the Court of Criminal Appeals issued A Certificate of judgment.

On November 9 , 2015, Jones filed a Petition for Writ of Habeas Corpus pursuant to 2XXXXXXXXXXXX, pursuant to State law in the Circuit court of St. Clair County Alabama, in which Jones argued that he was imprisoned in violation

of the U.S. Constitution because his sentence is illegal, on January 8, 2016, the St. Clair County Court converted the habeas petition into a Rule 32 Alabama Rules of Criminal Procedures petition, and transferred it to the County of conviction.

The Marshall county circuit court conducted a hearing and denied the petition on September 21, 2016. On April 28, 2017, the Alabama Court of Criminal appeal affirmed, a Certificate of judgment was issued on July 7, 2017. On September 23, 2018, Jones filed a Federal habeas Petition pursuant to 28 U.S.C. §2254, as grounds for relief, Jones argues the Following:

1. Counsel was ineffective for failing to raise due process claims, because Jones was denied an Attorney during Police interrogation and he did not sign the advice of rights form, nor was it witnessed, rendering Jones confession null and void;

2. Counsel was ineffective for failing to object that a court reporter was not present during Jones resentencing and failed to make certain objections concerning the enhancement of Jones's sentence, and

3. Jones statement to Guntersville Police on June 1, 2007, should not have been introduced to the jury. In response to an Order to show cause, Respondent filed an answer arguing that Jones habeas petition should be dismissed as untimely. Jones filed a response arguing that the untimeliness should be excused because Jones is actually innocent of the crime charged and presented evidence that while he was in the Marshall County Jail, waiting

to be resentenced, an inmate named Billy Goffey informed him that he saw William Brassell driving the vehicle when it struck the victim's and left the scene.. On February 16, 2021, a United States Magistrate Judge recommended that Jones petition be dismissed with prejudiced. On April 13, 2021, the District Court, over Jones Objections, adopted the Magistrate Report and Recommendation and issued an order dismissing with prejudice Jones habeas petition and denied a certificate of appealability on June 7, 2021.

On September 1, 2021, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court denial of habeas relief and likewise denied Jones a Certificate of Appealability. The Eleventh Circuit on November 18, 2021, denied Jones Motion for Reconsideration. Thus, this timely Petition for Writ of Certiorari ensues.

REASONS FOR GRANTING THE PETITION

Petitioner, Bobby Ray Jones contends that the District Court procedural Ruling that Jones Habeas Petition be dismissed as untimely pursuant to 28 U.S.C. §2244(d)(1)(A) was incorrect and the subsequent denial of Jones request for issuance of a Certificate of Appealability, was Contrary to and involved an unreasonable of this Court decision in Slack Vs. McDaniel, 529 U.S. 473, 484 (2000) and its Progenies. To obtain a COA, Jones must show that jurists of reason would find debatable whether the Petition states a valid claim of the denial of a Constitutional right and that jurists of reason would find it debatable whether the District court was correct in its procedural ruling. Id. at 484

Turning to the lower Courts procedural holding, that Jones petition be dismissed as untimely pursuant to 28 U.S.C. §2244(d)(1)(A).

Jones in an effort to overcome the bar asserted a claim of actual innocence. A plea of actual innocence, if proved, can overcome the one-year limitations period for filing a Federal habeas petition. McQuiggin Vs. Perkins, 569 U.S. 383, 386 (2013).

To be credible, a claim of actual innocent must be based on reliable evidence not presented at trial. Schlup V. Delo, 513 U.S. 298, 324 (1995). The actual innocence gateway should open only when a petition presents evidence of innocence so strong that a court

cannot have confidence in the outcome of the trial unless the Court is also satisfied that the trial was free of nonharmless Constitutional error. McQiggin, 569 U.S. at 401.

In the instant case, Jones has met the Schlup standard. Jones asserted that while he was in the Marshall County Jail awaiting RESENTENCING, AN INNATE NAMED Billy Guffey informed Jones that he saw William Richard Brassell driving the vehicle when it struck the victim, and that Guffey saw Brassell leave the scene at striking the victim with the vehicle. Moreover, Jones avers that his incarceration has hindered his efforts to obtain affidavit from Guffey and another witness, Terry Nefflin, who stated that Jones is innocent of the charges.

The District Court held that this new evidence only amount to impeachment of Brassell and Marks trial testimony and questions the witness's veracity. However, Jones disagrees and contends that this trustworthly eyewitness account is critical evidence that Jones did not commit the crime, and identified State's witness William Brassell as the perpetrator of the crime. Under Schlup and McQiggin, Jones contends that the District erred in not allowing the gateway to open so that Jones petition is timely and his habeas claims heard on the merits. Indeed, any reasonable Jurist could debate whether the District Court was correct in it pre-Cederal Ruling. A COA should issue. Slack v. McDoniel, SUPRA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bobby Jones

Date: Feb. 8th, 2022