No. 21-7592

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Detrick Deroven — PETITIONER
(Your Name)

vs.

Bobby Lumpkin, Director, TDCJ-CID — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Detrick Deroven
(Your Name)

Hughes Unit, Rt. 2 Box 4400
(Address)

Gatesville, Texas 76597
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the Petitioner made a substantive claim of actual innocence to sustain a Schlup v. Delo or Napue v. Illinois violation under the XIV Amendment?

LIST OF PARTIES

[X] 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:

RELATED CASES

McQuiggin v. Perkins, No. 09-1875, United States Court of Appeals for the Sixth Circuit. Decided March 1, 2012

McQuiggin v. Perkins, No. 12-126, Supreme Court of the United States. Decided May 28, 2013

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

TABLE OF AUTHORTIES CITED (Continued)

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[ ] is unpublished.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[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Hightest State court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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).

[XX] For cases from **state courts:**

The date on which the highest state court decided my case was Jan. 19, 2022. A copy of that decision appears at Appendix D.

[X] A timely petition for rehearing was thereafter denied on the following date: Jan. 11, 2022, 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

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 it's jurisdiction the equal protection of the laws.

* * *

Section 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

The Amendment is enforced by Title 42, Section 1983, United States code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

For the purpose of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the Dictrict of Columbia.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (Continued)

The statute involved and under review is, Supreme Court Rule 10(b), which states:

(b) a State Court of last resort has decided an important Federal question in a way that conflicts with the decision of another State Court of last resort of a United States Court of Appeals.

* * *

Texas constitutional provisions and statutes under which Petitioner sought Mandamus review are, Tex.Const.art. V § 5(c), Tex.Code Crim.Proc. art. 4.04 § 1 which states:

Tex.Const.art. V § 5(c)

(c) subject to such regulations as may be prescribed by law, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the Writ of Habeas Corpus, and in criminal matters, the Writs of Mandamus, procedendo, prohibition, and certiorari. The Court and the Judges thereof shall have the power to issue such other Writs as may be necessary to protect it's jurisdiction or enforce it's judgments. The Court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of it's jurisdiction.

Tex.Code Crim.Proc. art. 4.04 § 1.

Sec. 1. The Court of Criminal Appeals and each judge thereof shall have, and is hereby given, the power and authority to grant and issue and cause the issuance of Writs of Habeas Corpus, and in criminal law matters, the Writ of Mandamus, procedeno, prohibition, and certiorari. The Court and each Judge thereof shall have, and is hereby given, the power and authority to grant and issue and cause the issuance of such other Writs as may be necessary to protect it's jurisdiction or enforce it's judgments.

STATEMENT OF THE CASE

The Director has unlawful custody of Petitioner pursuant to a judgment and sentence of the 186th District Court of Bexar County, Texas, in cause number 96CR3437A. Styled the State of Texas v. Detrick Deroven. In that case Petitioner pled not guilty before a jury, but on November 20, 1997, the jury found him guilty and sentenced him to a life of confinement.

Petitioner appealed, but his conviction was affirmed. Deroven v. State, No. 04-98-00942-CR (Tex.App.-San Antonio, 2000, unpublished). His Petition for Discretionary Review was refused. Deroven v. State, PDR No. 0033-02, Apr. 17 2001).

Petitioner then filed a State application for writ of Habeas Corpus, but they were denied and dismissed without written order on findings of the trial Court without a hearing. App.Nos. WR-39,146-03 (CCA. June 15, 2005), WR-39,146 -04 (CCA. Dec. 4, 2013).

In 2021, Petitioner sought to reopen the 1997 judgment by filing a motion for Reconsideration/Rehearing and motion for leave to file the original application for writ of Mandamus but they were denied and dismissed without order or a hearing. App. No. 39,146-03 (Jan. 11, 2022), No. WR-39,146-05 (Jan. 19, 2022).

Petitioner suggest that the Supreme Court's decision in McQuiggin v. Perkins and the Texas Court of Criminal Appeals decisions in Ex parte Chabot and Ex parte Chavez, had changed the law in a way that provided a new legal basis that was previously unavailable, when Petitioner filed his first Habeas and subsequent application entitled him consideration of, and relief on, his Due Process false-testimony claim and permitting him to litigate his actual innocence claim on the merits.

Petitioner now seeks review on certiorari.

REASONS FOR GRANTING THE PETITION

A. Conflicts with decisions of other Courts, the Court of Criminal Appeals considered the affidavits as evidence newly discovered irrelevant to appraisal of an actual innocence claim, where a constitutional error allegedly occured, "conflicts with the decision of a United States Court of Appeals." Rule 10 (b), Fairman v. Anderson, 188 F.3d 635 (5th Cir. 1999), Cleveland v. Bradshaw, 693 F.3d 626 (6th Cir. 2012), Sanders v. Sullivan, 863 F.2d 218 (2nd Cir. 1988). In addition, all Schlup requires is that the new evidence is reliable and that it was not presented at trial. Schlup v. Delo, 513 U.S. 298, 324, 115 S.Ct. 851 130 L.Ed. 2d 808 (1995), See also Caldron v. Thompson, 523, 559, 118 S.Ct. 1498 140 L.Ed. 2d 728 (1998).

B. Importance of the Question Presented:

This case presents a fundamental question of the interpretation of this Courts decision in McQuiggin v Perkins, 569 U.S. 383, 133 S.Ct. 1924, 185 L.Ed. 2d 614 (2013). The question presented is of great importance, where a petitioners claim of actual innocence is for the purpose of having the Court determine whether constitutional errors alleged in the motion for reconsideration/ rehearing and mandamus petition warrant relief, guidance on the question is also of great importance to Petitioner, because he is required to meet a less stringent standard than in cases where the Petitioner seeks Habeas relief solely on the basis of his claimed innocence.

Under 28 U.S.C. § 2254 (d), a federal court may not issue a writ of Habeas Corpus for a defendant convicted under a State judgment unless the adjudication of the relevant constitutional claim by the State Court, (1) '" was the contrary to federal law then clearly established in the holdings of " the Supreme Court, or (2) '" involved on unreasonable application of '" clearly established Supreme Court precedent, (3) "' was based on an unreasonable determination of the facts' in light of the record before the State Court." Harrington v. Richter, 131 S.Ct. 770, 785 (2011)(quoting Williams, 529 U.S. at 412(2000), 28 U.S.C. § 2254(d). "[Clearly established Federal law " under § 2254(d)(1) refers to "the governing legal principles or principles set forth by the Supreme Court at the time the State Court rendered it's decision." Lockyer v. Andrade, 538 U.S. 63, 71-72, 123 S.Ct. 1166, 155 L.Ed. 2d 144 (2003).

I. Claim of Actual Innocence is a cognizable constitutional claim. Petitioner's motion for Reconsideration/Rehearing and original application for Writ of Mandanus is based essentially on his claim that newly discovered evidence indicates both that he did not recieve a fair trial and that, under the standard set forth in Schlup v. Delo, 513 U.S. 298, (1995), he is actually innocent of capital murder. Appendix C - Motion nos. 1-3 at pg. 2-4, Appendix D - Mandamus nos. 1-2 at pg. 13-14.

In Schlup, the Supreme Court described two types of claims pertaining to actual innocence as asserted in Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed. 2d 203 (1993), that execution of an innocent person violates the Eighth Amend. even if a conviction was the product of a fair trial. Second, the Court recognized the procedural claim, asserted by Schlup, that conviction of an innocent person is constitutionally impermissable when the conviction was the product of an unfair trial. However, claims of actual innocence do not state a basis for federal habeas corpus relief, absent an independent constitutional violation. Herrera, 506 U.S. at 400, Boyd v. Puckett, 905 F. 2d 895-896 -97 (5th Cir. 1990).

In this case, Petitioner does does not make a substantive claim of actual innocence. Rather, he argues that his constitutional claims of an unfair trial must be considered, because the State violated his Due Process and fair trial rights by it's use of material false testimony, to demonstrate the necessary independent constitutional violation, to meet the requisite showing of actual innocence under Schlup.

Specifically, the Petitioner suggest that: (1) The Court of Criminal Appeals erred as a matter of law in declining to address Petitioner's claim of actual

innocence, (b) reaching Petitioner's constitutional claims before considering the gateway issue of his actual innocence, (c) applying the standards of 28 U.S.C. § 2254 (e)(2) to deny Petitioner an evidentiary hearing on the question of his actual innocence, and (d) failing to recognize that Petitioner has made a colorable showing of actual innocence. See Appendix A - Finding of Fact no. 6, n. 2 at pg. 4, Appendix B - Allegations of Applicant no.1-3 at pg.1-2.

The Supreme Court has explained in McQuiggin that, "[a] Court may consider how the timing of the submission and likely credibility of [a Petitioner's] affiants bear on the probable reliability of... evidence [of actual innocence] "Schlup, 513 U.S. at 332, 115 S.Ct. 851; 130 L.Ed. 2d 808, see also House, 547 U.S. at 537, 126 S.Ct. 2064, 165 L.Ed. 2d 1 (quoting McQuiggin, 569 U.S. at 399, 133 S.Ct. 1935, 185 L.Ed. ed 1035 (2013).

"Actual innocence means 'factual innocence and not mere legal insufficiency' United States v. Jones, 172 F.3d 381, 384 (5th Cir.1999)(quoting Bousley v. United States, 523 U.S. 614 (1998)). "To establish actual innocence, [the] petitioner must demonstrate that, 'in light of all the evidence,' 'it is more likely than not that no reasonable juror would have convicted him.'" Bousley, 523 U.S. at 623 (quotingSchlup v. Delo, 513 U.S. 298, 328 (1995)).

A substsstial claim that a constitutional error has caused the conviction of an innocent person is wxtremely rare. To be credible, such a claim requires Petitioner to support his allegations of constitutional error with new reliable evidence--whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence--that was not presented at trial. Schlup v. Delo, 513 U.S. at 324 (internal citation omitted). The prosecution's key witness against Petitioner was an accomplice, Lyndon Jamison. Jamison claimed he was held at gunpoint until he agreed to help Petitioner commit the offense. Appendix A - Finding of Fact no. 6, n. 2 at pg. 4.
At his trial for the offense, Jamison pleaded duress and explained what happened His version of the facts was accepted, his defense of duress prevented a finding of guilty against him. Id. In a written statement and affidavit dated - June 10, 2004, Jamison retracted his 1997 defense of duress testimony in both trials. However, the Habeas Court did not examine Jamison's 1996 confession and recantation to the San **Antonio Police** Department, his 1997 trial testimonies nor his 2004 recanting affidavits separately to determine whether it satisfies Schlup criteria. Because Schlup instructs that additional evidence of actual innocence must be both new and reliable before it can be considered. Schlup, 513 U.S. at 324.

Accordingly, Petitioner has met the first test, because a recantation is a new version of the facts, therefore, it constitutes newly discovered evidence. The evidence against Petitioner at trial was weak, and without Jamison's testimony discussed above, the jury was left without a complete picture of the facts at hand.

Jamison was the critical witness for the prosecution, as acknowledged by the Habeas Court, and thus, without his testimony, the prosecution would have been unable to proceed. Yet the Habeas Court heard no evidence, and noted that "such evidence is not worthy of serious consideration" to meet Schlup v. Delo's actual innocence standard, appears to be dispositive McQuiggin, 569 U.S. at 400. This claim has merit.

C. New Evidence:

The prosecution violated Petitioner's Due Process rights by, I. use of false testimony from trial witness Lyndon Jamison, Appendix C - Motion nos. 1-3 at pg. 2-4, Appendix D - Mandamus nos. 1-2 at pg. 13-14. I. Lyndon Jamison's Recanting Affidavits

In this claim, the prosecution violated Prtitioner's Due Process rights by use of false testimony from Jamison. Id. This claim has merit as explained below.

As a general rule, The State's use of material false testimony violates a defendant's Due Process rights. In cases involving the State's knowing use of false testimony in violation of Due Process, an "applicant has the burden to prove by a preponderance of the evidence that the error contributed to his conviction or punishment." Ex parte Fierro, 934 S.W. 2d 370, 374 (Tex.Crim. App. 1996).

Under the standard set by the Supreme Court in Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959), a State's knowing presentation of false testimony will result in a new trial for the Applicant if there is "any reasonable likelihood that the false testimony could have affected the jury's verdict." Ex parte Weinstein, 421 S.W. 3d 656, 669 (Tex.Crim.App.2014), Napue 360 U.S. at 271.

As such, "The Due Process Clause of the Fourteenth Admendment can be violated when the State uses false testimony to obtain a conviction, regardless of whether it does knowingly oe unknowingly." Ex parte Robbins, 360 S.W. 3d 446, 459 (Tex.Crim.App. 2011)(Citing U.S. Const. amend. XIV).

The Texas Court of Criminal Appeals Fierro error is a species of Napue error which the Court continued to use in Chabot and Chavez. In Ex parte Chabot 300 S.W. 3d 768 (Tex.Crim.App. 2009).

Wherein the Court held for the first time that the admission of false testimony could violate an applicant's Due Process rights even when the State was unaware at the time of trial that the testimony was false. Id. at 772. "False" testimony is testimony that, "taken as a whole, gives the jury a false impression." Ex parte Chavez, 371 S.W. 3d 200 (Tex.Crim.App. 2012).

Lyndon Jamison's testimony at Petitioner's trial was that he was "forced by Applicant at gunpoint to drive Applicant to where he committed the offense" Appendix A - Findings of Fcats no. 6 n. 2 at pg. 4.

In his first application and subsequent application, Petitioner claimed that new evidence shows the State's chief witness presented false testimony at trial is enough to demonstrate that Jamison's testimony is "actually false," and "was material," Pyles v. Johnson, 136 F. 3d 986, 996 (5th Cir. 1998).

In Chabot, the Appeals Court found that the false accomplice - witness testimony was also material because it provided the only direct evidence supporting the conviction. See Chabot, 300 S.W. 3d at 772. This claim has merit.

D. Petitioner's Allegations Satisfy His burden Under the AEDPA.

Petitioner has shown that the State Court resolution of his allegations resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States or result in adecision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding, 28 U.S.C. § 2254(d).

The Court of Criminal Appeals denied Petitioner's application for Writ of Habeas Corpus without written order on findings of the trial Court without a hearing, dismissed his subsequent application for Writ of Habeas Corpus, dismissed his motion for Reconsideration/Rehearing and denied without order motion for leave to file the original application for Writ of Mandamus. Appendix A-D.

Hence, this was an adjudication on the merits, Singleton v. Johnson, 178 F 3d 381, 384 (5th Cir. 1999), see Green v. Johnson, 116 F. 3d 1115, 1121 (5th Cir. 1997).

Testimony gives a false impression when a "witness omitted or glossed over pertinent facts." Robbins, 360 S.W. 3d at 462. However, the "testimony need not be perjured to constitute a Due Process violation, rather, it is sufficient that the testimony is false." Chavez, 371 S.W. 3d at 200.

Accordingly, for a Chabot claim review, two essential elements must be satisied: the testimony used by the State was false, and it was material to the Applicant's conviction. To show that the State's presentation of false testimony is material, an "Applicant has the burden to prove by a prepond-erance of the evidence that the error contributed to his conviction or punishment." Chabot, 300 S.W. 3d at 771 (citing Fierro 934 S.W. 2d at 374). This is done by showing that there is a "reasonable likelihood that the false testimony affected the Applicant's conviction or sentence." Chavez, 371 S.W. 3d at 207. In rendering it's findings, conclusions, and recommendation, the State Habeas Court focused on whether or not prosecution's witness, Lyndon Jamison executed his affidavits - June 10, 2004, and not whether the testimony was false or perjured pursuant to requirements of Chabot and Napue. The Court concluded that, "Lyndon Jamison is the witness whose testimony conclusively demonstrated Applicant's guilt." "He himself stood trial for the same prior to Applicant and was acquitted." "Assuming arguendo that the affidavit's of recantation were in fact executed by the selfsame Lyndon Jamison, Applicant is faced with the lier's paradox." "That is, after he has asserted what a lier Mr. Jamison is, he now asks the Court to believe him when he says that he lied under oath." "Such evidence is not worthy of serious consideration." Appendix A - Findings of Fact no... 6 at pg' 4.

These findings, however, misapply the standard for false testimony and the State's intent in introducing that testimony are not relevant to false-testimony Due Process error analysis. See Robbins, 360 S.W. 3d at 459, Napue, 360 U.S. at 269. 1997), Ex parte Torres, 943 S.W. 2d 469, 472 (Tex.Crim.App. 1997). ("In our writ jurisprudence, a 'denial' signifies that we addressed and rejected the merits of a particular claim while a 'dismissal' means that we declined to consider the claim for reasons unrelated to the claim's merits.")

Where a State Court's decision is unaccompanied by an explanation, the Habeas Petitioner's burden still must be met by showing "the State Court's ruling on the claim being presented in Federal Court was so lacking in just-ification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Harrington v Richter 131 S.Ct. 770, 768-87 (emphasis added).

In this circumstance, the question is whether the State Habeas Court adjudication of Petitioner's actual innocence claim and false testimony claim "involved an unreasonable application" of clearly established law when it con-cluded that new evidence "the affidavits of recantation" executed by the

prosecution witness Lyndon Jamison "is not worthy of serious consideration." And that, "Applicant is not factually innocent." Appendix A - Finding of Fact no. 6 at pg. 4.

The Supreme Court stated in Schlup, [a] Court may consider how the timing of the submission and the likely credibility of [a petitioner's] affiants bear on the probable reliability of ... evidence [of actual innocence]." 513 U.S. at 332, 115 S.Ct. 851, 130 L.Ed. 2d 808, (quoting McQuiggin v. Perkins, 569 U.S. 383, 399, 133 S.Ct. 1924, 185 L.Ed. 2d 1019 (2013). The question is whether the testimony, taken as a whole, gives the jury a false impression. See Alcorta v. Texas, 355 U.S. 28, 31, 78 S.Ct. 103, 2 L.Ed. 2d 9 (1957)., 28 U.S.C. § 2254(d). Here, the Petitioner submitted one particularly relevant item of additional evidence that when considered together with the record as a whole presented a compelling case for his innocence. The relevant item is the recantation of the only eyewitness to the murders. The fact that the eyewitness had no motive to recant his testimony, but instead sought to do so on his own free will lent it credibility. Therefore, Petitioner is entitled to relief under the AEDPA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Dewes

Date: April 1st, 2022