

No.: 21-7605

IN THE
SUPREME COURT OF THE UNITED STATES

LWANE A. MANSELL — *PETITIONER*

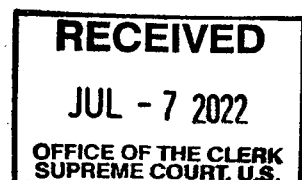
vs.

SECRETARY, FLORIDA DEPT. OF CORRECTIONS,
STATE OF FLORIDA— *RESPONDENT(S)*

Amended Petition for Rehearing from the denial
of a Petition for Writ of Certiorari

AMENDED PETITION FOR REHEARING

LWANE A. MANSELL,
Petitioner, *pro se*
DC# T60254
Bay Correctional Facility
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Panama City, Florida 32404



PETITION FOR REHEARING

COMES NOW, the Petitioner, Lwane A. Mansell, *pro se* and pursuant to Rule 44 of the Rules of the Supreme Court of the United States and submits this Petition for Rehearing pursuant to this Court's Order denying the Petitioner's Petition for Certiorari dated May 16, 2021. The Petitioner respectfully disagrees with this Court's denial to his claims of U.S. Constitutional violations and in support thereof submits the following:

ARGUMENT IN SUPPORT

The Petitioner avers that this Court either overlooked or misinterpreted the constitutional violations that he has submitted through the questions presented for review in his Petition for Writ of Certiorari and that he presented legally sufficient claims that warrant relief. In this case, the 11th Circuit Court of Appeals, the Middle District of Florida, and the Florida State Courts have all erred in denying habeas relief to the Petitioner for the constitutional injury he has suffered. Mr. Mansell is seeking a review of this Court's decision and the District Court's order denying his 28 U.S.C. 28 § 2254 petition. In his Petition for Writ of Habeas Corpus Mr. Mansell asserted that he is entitled to relief based on the violations of the Florida State Courts that deprived him of his constitutional rights as afforded under the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution.

I. WHETHER THE DISTRICT COURT ERRED IN DENYING CLAIM ONE OF THE PETITIONER'S 28 U.S.C. § 2254 AS PROCEDURALLY BARRED WHEN THE STATE COURT VIOLATED HIS 5TH, 6TH, AND 14TH, AMENDMENT RIGHTS WHERE A DISCOVERY VIOLATION HAD TAKEN PLACE PURSUANT TO *BRADY v. MARYLAND*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)?

The issue presented falls under 28 U.S.C. § 2254(d) subsection (1) where the State court's erred in denying the Petitioner's claim that the State committed a discovery which in turn constituted a violation *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). This decision was contrary to, and involved an unreasonable application of clearly established federal law pursuant to 28 U.S.C. § 2254(d) which states as follows:

Petitioner Mansell submits that the District Court erred when it denied his claim that the state court's failure to grant a new trial resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law. When the prosecution introduced a statement during opening it violated the Petitioner's 5th, 6th, and 14th, Amendment rights to a fair trial. This violation deprived the Petitioner of the opportunity to prepare a defense for it before trial commenced, and resultingly, damaged the whole theory of defense was pursuing. When the State introduced the statement defense counsel objected to the discovery violation seeking an immediate mistrial; the trial court denied the objection and categorized the violation as inadvertent. The trial court opined that the discovery violation did not affect the strategy and preparation of the defense, and more importantly, the court shifted the burden to the defense asking counsel to show how the defense strategy or preparation was effected. In doing so, the trial

court committed a fundamental reversible error by allowing the discovery (*Brady*) violation to stand. This new [alleged] statement made by the victim completely took defense counsel by surprise undermining her whole theory of defense. The denial of the mistrial and allowance of the violation resulted in procedural prejudice against the Petitioner as it was a material change in the victim's depositions statements. Here, if the defense had known that the witness was not going to testify consistent with her deposition, the defense would have devised a different trial strategy altogether. Thus, the trial court erred in denying the defense's motion for a mistrial due to the discovery violation because the defense was procedurally prejudiced by the discovery violation and that error was not harmless. The discovery violation was material as it was dispositive to the outcome of the proceedings as it went directly to establishing the Petitioner's guilt and punishment.

A. Clearly Established Federal Law:

This Court's decision in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) constitutes what is defined as clearly established federal law. In *Brady*, this Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The Court set out the three components or essential elements of a *Brady* prosecutorial misconduct claim: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently;

and prejudice must have ensued." With regard to the prejudice component, "favorable evidence is material, and constitutional error results from its suppression by the government, if there is a 'reasonable probability' that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

Here, pursuant to *Brady*, the State [d]id violate a constitutional law and the duty to disclose evidence favorable to the Petitioner when that evidence was material to his guilt and punishment. In this instance, while the [new] evidence went directly to the guilt of the Petitioner and it most assuredly was material in the *Brady* context because it was determinative to the end result and its suppression undermined confidence in the outcome of the trial. The failure to disclose the statement adversely affected the defense strategy and [a]ny subsequent ability to prepare a defense to it. The prosecution was the beneficiary of the *Brady* violation by concealing it from the defense. More importantly, the disclosure the defense was procedurally prejudiced because the Petitioner's trial preparation and strategy would have been different had the violation not occurred. The State's discovery violation significantly hindered the Petitioner's trial preparation and strategy.

Petitioner Mansell submits that he has demonstrated that the state court's application of the "suppression" component of the *Brady* standard was so erroneous that there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedent for discovery violations. The same is true of the "materiality" component of *Brady* because the evidence was *material* to

what the jury had to consider and there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. Therefore, the Petitioner has satisfied both the "*suppression*" and the "*materiality*" elements of the *Brady* violation. This claim requires a reversal for a new trial.

II. WHETHER THE DISTRICT COURT ERRED IN DENYING THE PETITIONER'S CLAIMS REGARDING THE SUFFICIENCY OF EVIDENCE OF THE PETITIONER'S 28 U.S.C. § 2254 PURSUANT TO *JACKSON V. VIRGINIA*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560, (1979) AND IN DOING SO VIOLATED HIS 5TH, 6TH, AND 14TH, AMENDMENT RIGHTS?

The issue presented falls under 28 U.S.C. § 2254(d) subsection (1) where the State court's erred in denying the Petitioner's claim that the sufficiency of the evidence used to convict was a violation of *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560, (1979). This decision was contrary to and involved an unreasonable application of clearly established federal law.

The issue here is whether the District Court erred in denying the Petitioner's claim regarding the sufficiency of the evidence used to obtain the conviction against him. As discussed in Issue One, the Petitioner was materially prejudiced by the Trial Court's error in allowing the State's discovery violation to continue unabated and in doing so tainted the jury against him allowing them to infer guilt before the presentation of evidence had even begun. Additionally, the evidence produced at trial did not equate to the Petitioner's guilt based on the instructions presented to the jury. The constitutional injury complained of herein was left un-remedied by the State and Federal Courts.

In the deposition of the alleged victim taken on October 23, 2007, when questioned by the Petitioner's female defense attorney, J.G. did not testify that the Petitioner had [act]ually touched either her breast or her vagina and only said that he took his hand off her shoulders and started putting it down [t]owards her "boob" or her breast.

Sufficiency of the Evidence:

The evidence adduced at trial failed to establish a prima facie case that the State had proven that the Petitioner was in fact guilty of "*luring and enticing a child.*" The Petitioner submits that the record demonstrates that she was not lured and enticed to go there and the evidence and testimony presented does [n]ot support a finding of "luring and enticing."

Sufficient evidence *did not exist* to permit a rational trier of fact to find the elements of the crime beyond a reasonable doubt without the suborning of the testimony by the prosecution. There is no evidence that the Petitioner invited, persuaded, or attempted to persuade the child to enter his home *with the intent to commit an unlawful sexual act* upon the alleged victim. The evidence adduced at trial failed to establish a prima facie case that the State had proven that the Petitioner was in fact guilty of Lewd and Lascivious Conduct (touch), an intentional touching. Therefore, if the Petitioner **never touched her breast**, even if he had attempted to touch her breast as she alleged, **he did not commit** the crime of Lewd and Lascivious Conduct (touch). A conviction for an offense for which there is no evidence is fundamentally erroneous, and as here, the facts do not constitute the

offense charged as a matter of law. The conviction for Lewd and Lascivious Conduct (touch) is not supported by the evidence presented and was not sufficient to sustain a conviction.

The evidence adduced at trial failed to establish a prima facie case that the State had proven that the Petitioner was in fact guilty of Lewd and Lascivious Conduct (solicit), charge. There was no proof of the Petitioner's intentions, only speculation and that is insufficient evidence to support a conviction for the crime he was charged with. The sufficiency of the evidence failed to establish the Petitioner offered money to perform a [s]pecific sexual act on the alleged victim. The conviction for Lewd and Lascivious Conduct (Solicit) is not supported by the evidence beyond a reasonable doubt.

III. WHETHER THE DISTRICT COURT ERRED IN DENYING CLAIMS SIX THROUGH ELEVEN OF THE PETITIONER'S 28 U.S.C. § 2254 FOR THE INEFFECTIVE ASSISTANCE OF COURT APPOINTED COUNSEL WHERE THE STATE COURT DECISIONS WERE CONTRARY TO OR AN UNREASONABLE APPLICATION OF *STRICKLAND V. WASHINGTON*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)?

The issue presented falls under 28 U.S.C. § 2254(d) subsections (1) and (2) where the District Court erred when it denied the Petitioner's argument that the State Court's denial of the Petitioner's ineffective assistance of counsel claims were not in violation of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The Petitioner's claims of ineffective assistance of counsel were argued in claims six through eleven within the Petitioner's 28 U.S.C. § 2254 petition for writ

of habeas corpus. For the purposes of Certiorari Review the Petitioner only addressed the argument regarding counsel's ineffective assistance regarding the failure to investigate and present his competency to stand trial.

1. Failure to Investigate the Petitioner's Competency:

Petitioner Mansell argued that counsel failed to investigate his mental illness history (encephalitis) prior to trial. Counsel's failure to investigate and alert the court of the Petitioner's need to be evaluated prior to trial violated his due process and the right to be determined competent to stand trial.

A. Mental Illness:

The Petitioner had been previously diagnosed with encephalitis (a degenerative brain disorder) that he contracted while serving two voluntary tours of duty during the Vietnam war. More importantly, one of the doctors that evaluated him, Dr. Marotti opined before the postconviction court that the Petitioner was incompetent to stand trial and that based on her assessment his competency. Due to counsel's inactions and failure to investigate the Petitioner's mental health, he proceeded to trial while incompetent. Under the Sixth Amendment, counsel has "a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. *See also Wiggins v. Smith*, 539 U.S. 510, 525, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003).

Counsel's deficient performance allowed an incompetent man to be tried and convicted depriving him of his due process and right to a fair trial.

A criminal defendant may not be tried unless he is competent. *See, Pate v Robinson*, 383 US 375, 378, 15 L Ed 2d 815, 86 S Ct 836 (1966); *Dusky v United States*, 362 US 402, 4 L Ed 2d 824, 80 S Ct 788 (1960) *Accord, Drope v Missouri*, 420 US 162, 171, 43 L Ed 2d 103, 95 S Ct 896 (1975). The unreasonable application of Supreme Court holdings by the State court regarding the Petitioner's competency issues [w]as "*objectively unreasonable*" because it allowed the Petitioner's verdict to stand when he was actually declared incompetent by a medical mental health professional after the fact. The State court decisions were and are in direct conflict with this Court's rulings in *Dusky, Pate, and Drope, supra*.

The Petitioner avers that he has demonstrated the double differential standard of *Strickland*, and the applicable laws pursuant to *Harrington, Cullen, and Knowles*, that counsel was constitutionally deficient and ineffective in her representation of the Petitioner.

Accordingly, the state court's determinations resulted in decisions that were contrary to, and involved an unreasonable application of clearly established Federal law as determined by this Supreme Court of the United States. The above mentioned constitutional violations warrant the granting of certiorari relief and the reversal for a new trial.

Petitioner Mansell is in custody of the Florida Department of Corrections contrary to the Constitution, Laws, and or Treaties of the United States.

Supporting Facts:

The Petitioner submits the following issues to further support his warranting Certiorari relief:

1). The Petitioner is a veteran of two tours of combat duty in the Republic of Vietnam from 1970-72, who made the choice to fight for the Constitution of the United States of America.

2). While in the jungles of Vietnam, the Petitioner contracted the illness known as encephalitis while in the theater of combat. This illness is directly connected to and labeled a "mental illness" and a mental health handicap. Once it is contracted in the body it attaches directly to the brain, leaving residual effects that can never be repaired. In the Petitioner's VA records is a list of the areas affected by this disease and it took nearly six months for the Petitioner to recover somewhat from the initial contact. Once it was believed that the Petitioner had recovered, he requested for and was sent back into Vietnam. However, in his VA report, Doctors stated that he should never have been permitted to go back to Vietnam because of his mental health problems at that time.

3). The Petitioner submits that he fought for the very Constitution and took an oath to defend that he now needs someone to protect him with because those rights guaranteed by the Constitution are being violated. He further submits that he has a right to justification just as much as anybody else in this country. The Petitioner was honorably discharged from service in which he received the Vietnam Medal with Cluster Star and the Medal of Valor from the Republic of South Vietnam along with Medals that he has received. The Petitioner did his duty as a warrior and to this day suffers as a consequence of his service for this country and being in that war. The Petitioner is 70 years old after serving in special forces in Cambodia and the Armored 23 infantry division and in his second tour as a door gunner with the 1st Aviation Assault Helicopter Unit 222, 195 Assault Helo Corp.

4). The Petitioner submits that he is entitled to Certiorari relief because the State of Florida has not proven the case against him and all they can say is speculation and that it could have been. It's a violation of common law, no supporting witnesses or evidence to prove a crime has been committed.

5). The State of Florida has denied the Petitioner his constitutional rights on "loop hole" law, where many inmates in this state are kept bound in prison with no hope of release. This is a major violation of constitutional law.


6). Ignorance of the law is no excuse, however being mentally handicapped is. It is documented in the Petitioner's VA medical records that he receives as part of his VA service connected disability 100%.

CONCLUSION

The Petitioner respectfully requests this Honorable Court to grant this Petition for Rehearing from the Denial of his Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Lwane A. Mansell
Lwane A. Mansell,
Petitioner, *pro se*
DC# T60254
Bay Correctional Facility
5400 Bayline Drive
Panama City, Florida 32404


JUN 28 2022

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SECRETARY, FLORIDA DEPT. OF CORRECTIONS,
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CERTIFICATION

I, LWANE A. MANSELL, Herby certifies that the foregoing grounds in this Amended Petition for Rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

I, LWANE A. MANSELL, also herby certify that the instant Amended Petition for Rehearing is presented in good faith and not for delay.

Respectfully submitted,

/s/ Lwane Mansell
Lwane A. Mansell
Petitioner, *pro se*
DC# T60254

mt
JUN 28 2022