IN THE UNITED STATES SUPREME COURT

Kacy Williams 21-7717 PETITIONER

VS.

STATE OF MISSISSIPPI RESPONDENT(S)

U.S. Dist. # 4:19-CV-95-DMB-DAS

U.S. 5th Cir. # 21-60354

U.S. Sup. Ct. #

ORIGINAL

Supreme Court, U.S.
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SUPREME COURT, U.S.

CC:

S/ Kacy Williams #59970
M.C.C.F.
833 West Street
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QUESTIONS PRESENTED FOR REVIEW

1. Whether The District Court Failed To Properly Utilize Its Discretion On The Petitioner's Habeas

2. Whether The Fifth Circuit Erred Or Abused Its Descretion On How It Handled The Firearms Conviction Claim

3. Whether Petitioner Was Denied Right To Be Heard Or Access To Court

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STATEMENT OF CASE

Petitioner Kacy Williams submitted a §2254 petition to the district court on one issue in particular, possession of firearm. The district court agreed with the state court's ruling on the matter instead of utilizing it's reviewability procedure to properly scrutinize the claim to find that the district court allowed for the claim to be excluded from established federal law requirement. The Fifth Circuit recieved the claim and held that petitioner abandoned the claim, but petitioner has constantly presented the claim to the necessary court.

STATEMENT OF FACTS

The claim should have awarded review at a fact-finding hearing to obtain facts "where according to "U.S. v. Bailey" and "Williams v. Taylor", the district court and Fifth Circuit Court, deviated from the rule of law that in order to establish possession of firearm, there must be some evidence proving 'actual' or 'constructive' possession, which neither was proven. This is grounds for issuance of writ on an evidentiary hearing.

INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Kacy Williams - petitioner
2. Dewayne Richardson - Dist. Atty.
3. State of Mississippi

JURISDICTION

This court's jurisdiction is invoked under 28 U.S.C. § 1254(1), where a timely petition for rehearing was not filed; a petition for writ of habeas was denied on the date of April 20, 2020; a petition for COA was denied on 3/28/2022.

RELEVANT STATUTES INVOLVED

28 U.S.C. § 2254(d)
28 U.S.C. § 2253(c)(2) + (c)(3)

OTHER STATUTES, ETC.

M.C.A. § 97-37-5
UCCCRP, 9.08

[GROUND ONE]

WHETHER THE DISTRICT COURT FAILED TO PROPERLY UTILIZE ITS DISCRETION ON THE PETITIONER'S HABEAS WHERE THE COURT DISMISSED THE FIREARM CHARGE ISSUE RENDERING A RIGHT TO BE HEARD VIOLATION

The district court, as the habeas court, has a set standard of rules it must convey and utilize in examining, viewing, or either deciding habeas claim merit. See Rules Governing Habeas Corpus Procedure.

Under these rules, the district court is vested with authority and responsibility to scrutinize habeas claims to determine sufficiency, merit, and proper remedy.

The rule or standard that comes into play here, is §2254(d), which discusses the precise way a district court is to examine all habeas claims, especially sufficiency of evidence; See Williams v. Taylor, 529 U.S. 362 (2000).

§ 2254, places a constraint on the power of a federal habeas court to grant relief to a state prisoner with respect to claims adjudicated on the merits in state court, where the habeas writ must issue if the state court's adjudication either (1) was contrary to established federal law, or (2) involved an unreasonable application of clearly established federal law, as determined by this Court; See Williams v. Taylor, 529 U.S. 362 (2000).

In light of the cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute. This Court must give independent sunting and meaning to both "contrary to" and "unreasonable application clauses, of § 2254, (d.1) and (d.2).

The first clause must be interpreted to mean that a state arrives at a conclusion opposite to that reached by this Court on a question of law or decides a case differently than this Court has on a set of materially indistinguishable facts. (Id).

Under the "unreasonable application" clause, if a state court identifies the correct governing principle to the facts of petitioner's case.
If these factors are met either one or both, then a federal habeas court must grant habeas relief; See Wright v. West, 505 U.S. 277 and see Williams v. Taylor, 529 U.S. 362 (2000).

The district court, on habeas review of petitioner's possession of firearms charge claim that it was not sufficiently constitutionally proven that he possessed a firearm pursuant to M.C.A. § 97-37-5, by substantiating all necessary essential elements of the charge.

The district court, deciding reviewability of the claim, the district held in its answer/order; "Respondents respectfully submit that Williams has presented nothing in his habeas petition to overcome the deference afforded by or rather to the appellate court's decision. Furthermore, Williams has failed to prove that the state court decision was an unreasonable application of law to facts."

" In addition, the district court held; "Respondents further respectfully submit that the state court's decision holding that Williams claim(s) lacked merit was neither contrary to, nor an unreasonable application of, clearly established federal law. Further, the decision was not based on an unreasonable determination of the facts in light of the evidence;" See Court's answer, page # 20.

During the court's overview of petitioner Williams's claim(s), the district court stated; "Williams admitted that he was a convicted felon, stating; furthermore, the victim testified he saw Williams holding a gun."

The district court, held that "State law is clear that such testimony may be sufficient to convict a defendant of possessing a weapon by a felon, even if no weapon is found;" see Court's answer, page # 19 and page # 20, at top.

Even if state law does support such a reasoning or decision, this is contrary to established federal law on issues of possession of a firearm by felon, and this was error and abuse of district court discretion to allow the state court's adjudication to stand or pass without the district court holding a de novo review, and going into the U.S. Supreme Court's understanding or mandate on the issue, where the district court was the higher court of review at the time.

The U.S. Supreme Court, specifically held and established that, a person charged with a crime, must be afforded proper and adequate due process protection which mandates that all necessary and essential elements of a charged crime must be proven beyond a reasonable doubt in order to sustain a conviction for the crime charged in indictment; See Jackson v. Virginia, 443 U.S. 307 (1979).

To show where the district court had abused its discretion on the firearms charge issue in petitioner's case here, is where it did not scrutinize petitioner's firearm charge properly as obligated, where it was to determine if the state court weighed the claim in the facet of federal law, as counter part of its state law.

In "U.S. v. Bailey", Terrell Bailey was convicted of possession of a firearm by felon in violation of 18 U.S.C. § 922(g)(1). The 6th Circuit Court granted a rehearing petition to correct a factual mistake concerning evidence that had been admitted for the jury's consideration regarding Bailey's firearms conviction where it was reviewed on "insufficiency of evidence"; See U.S. v. Bailey, 553 F.3d 940 (2009).

The 6th Circuit discussed the means of what would establish possession in 'Bailey's' situation, by acknowledging that both 'actual' and also 'constructive' possession may be proved by direct or circumstantial evidence.

The above holdings by the 6th Circuit derived from established law by the U.S. Supreme Court, that was not applied to petitioner

Williams's case on the subject matter. Where it was stated at petitioner's trial that the alleged victim Alfonso Hemphill, told officers that Kacy Williams, petitioner, shot him, the state court should have acted as a court of review and utilize its discretion as did the 6th Circuit Court, in determining what previous courts did on such situation when no weapon was found.

The district was at responsibility of reviewing the state court's decision de novo due to the fact, without physical actual evidence, there may could have evidence left out or uncovered to show favor in petitioner's contention of not possessing a firearm at the time or either before the alleged shooting occured.

The district court should have screened such case law availible, such as 'U.S. v. Bailey', to find if there was either "actual" or "constructive" possession of a firearm by petitiorer Williams.

The district court could have viewed the 'Bailey' case, and found that the 6th Circuit cited a case in "Bailey" to weigh out facts either favoring 'Bailey' or supporting the state's theory of possession in Williams's case. The Court cited U.S. v. Caraway, 411 F.3d 679, 680 (6th Cir. 2005), where it was presenting established law to determine if just by Bailey having been supposedly seen with a gun was enough to establish or substantiate possession, where in "Caraway" it was found by that court that there was sufficient evidence in that case to establish possession (actual) when officers saw the defendant holding gun and then drop the gun while fleeing.

The court used the case to show that Bailey had no direct physical control over a weapon in his case. The court also stated, "however, presence alone cannot show the requisite knowledge, power, or intention to exercise control over the unregistered firearm. (Id).

If the U.S. Supreme Court were to visit its holdings and established law in "Jackson v. Virginia", it would find that the firearms possession charge in petitioner Williams's case is unconstitutional and not legal where as, the essential elements that must be proven according to establish federal law, are "actual" and "constructive" possession. see Jackson v. Virginia, 443 U.S. 307 (1979).

According to Jackson v. Virginia, "the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt; (see at HN8).

Since petitioner was not found to be in actual possession of any firearm, then it was to be proven that he was in constructive possession of a firearm; See U.S. v. Craven, 478 F.2d 1329, 1333 (6th Cir.).

In U.S. v. Newsome, 452 F.3d 593, 606 (6th Cir. 2006), that court held that it is critical to reiterate that the theory of constructive possession requires specific intent.

With the evidence presented by the state, only trial testimony, was not wholly sufficient or worthy to render a conviction for firearm possession in Williams's case, which the district court should have examined or weighed under the familiar "no evidence" standard.

The "no evidence" doctrine of Thompson v. Louisville, 362 U.S 199, secures to petitioner Williams, the most elemental of due process, which is freedom from a wholly arbitrary deprivation of liberty.

The district court is familiar with the exerpt of law above, and the court may well know that it is hornbook law that in every criminal case, the state is required to prove each element of a charged offense beyond a reasonable doubt; Neal v. State, 451 So. 2d 743, 757 (Miss. 1984) see e.g. Bullock v. State, 447 So. 2d 1284, 1286 (Miss. 1984).

The Court cannot expect it fair or constitutional that petitioner incur the loss of liberty for an offense without notice and a meaningful opportunity to defend; see e.g. Hovey v. Elliot, 167 U.S. 409, 416-420; Cf. Boddie v. Connecticut, 401 U.S. 371, 377-379.

A meaningful opportunity to defend, if not the right to trial itself, presumes as well that a total want of evidence to support a charge will conclude the case in favor of Williams.

The U.S. Supreme Court held in the case of "Thompson v. Louisville", that a conviction based upon a record wholly devoid of any evidence relevant of a crucial element of the offense charged is constitutionally infirm; see Vachon v. New Hampshire, 414 U.S. 478; see also Adderley v. Florida, 385 U.S. 39.

Petitioner acknowledges that in any given case, the state must be given the benefit of all favorable inferences that may be reasonably drawn from objective facts established by evidence; Glass v. State, 278 So. 2d 384, 386 (Miss. 1973).

Inferences and presumptions are a staple of our adversary system of fact-finding. It is often necessary for the trier of fact to determine the existence of an element of the crime, that is, an 'ultimate' or 'elemental' fact from the existence of one or more 'evidentiary' or 'basic facts' (citations omitted).

The value of these evidentiary devices, and their validity under the Due Process Clause, varies from case to case, however, depending on the strength of the connection between the particular basic and elemental facts involved, and on the degree to which the device curtails the fact-finders' freedom to assess independently, the evidence in presentation.'

The ultimate test of any devices constitutional validity in a given case remains constant: the device must not undermine the fact-finders' responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt. (citations omitted).

Petitioner asks that the Court view the following cases for support: Ulster Co. Ct. v. Allen, 442 U.S. 140, 156 (1979) and Francis v. Franklin, 471 U.S. 307 (1985).

The objective elements of a crime must be proved not inferred. Subjective elements of a crime such as intent, may be inferred from objective facts proved. Presumptions properly tailored, could be used to infer a subjective element; see holding in Sandstrom, 442 at 512, 99 S. Ct. 2453, 61 L.Ed. 2d at 43 (intent-inference); see Ulster, 442 U.S. at 142, 99 S. Ct. at 2217, 60 L.Ed 2d at 783.

With this being said, the State prosecution presented to the jury, a case where there was a conviction founded and rendered on "hear-say" evidence, as it was saying; "We have no actual or substantial evidence that petitioner Williams possessed a gun in this case at any time, but, we might have proven that he may have had a gun or, weapon, but we can't show or prove it."

This is tantamount to Roman Law. Such a proposition may not co-exist with the authorative articulation of Williams's due process rights found in "Jackson v. Virginia" and in "In re Winship."

The district is supposed to, by virtue of the U.S. Constitution, and by established federal law in Jackson v. Virginia, 443 U.S. 307 (1979), look to the controlling law in Jackson when faced with questions of the sufficiency of evidence.

Upon its examination of a claim, Section § 2254(d) requires the district court to give state court opinions a respectful reading, and to listen carefully to its conclusion, but when the state court addresses a legal question, it is the law as determined by by the U.S. Supreme Court that prevails; see Lindh, 96 F.3d at 869.

The U.S. District Court failed in its obligation to properly handle petitioner's habeas claim on the possession of firearms conviction.

[GROUND TWO]

WHETHER THE FIFTH CIRCUIT ERRED OR ABUSED ITS DISCRETION ON HOW IT HANDLED THE FIREARMS CONVICTION CLAIM

The fifth circuit appeals court recieved petitioner's request for "COA" on issues mentioned in this writ presented, where he submitted proper arguement on the above firearm possession issue, along with other viable issues.

After several months in the Court's jurisdiction, the "COA" petition and "IFP" was denied, where the Court held in its order that petitioner did not meet the standard in Slack v. McDaniel, 529 U.S. 473, 483 (2000), to obtain or be rewarded "COA" review or passage.

In addition, the Court stated in its order. that petitioner's claims were deemed abandoned.

First, according to COA reviewability requirements, a petitioner must make a substantial showing of the denial of a constitutional right in order for a 'COA' to issue; See "Slack v. McDaniels".

To solidify or substantiate this showing, petitioner Williams was required to show that, reasonable jurists would agree whether, (or for that matter, agree that), the petition should have been resolved in a different manner, than the district court did, or that the issues presented were adequate enough to deserve encouragement to proceed further; 463 U.S. at 983.

The fifth circuit court's role on appeal is restricted to guarding against the rare occurence when a fact-finder does not act rationally, and the appeals court has final jurisdiction to review the legal sufficiency of evidence. (ibid).

During such a review, an appellate court must not usurp the role of fact-finder. Appellate Courts are ill-equipped to weigh the evidence; unlike the fact-finder, who can observe facial expressions, and hear voice infections first hard, an appellate court is limited to the cold record; see Laster v. State, 275 S.W. 3d 572 (2009).

According to Miller-El v. Cockrell, 537 U.S. 322 (2003), petitioner only needed to show the denial of a constitutional right, in which he did in the firearms possession issue alone.

Eventhough federal jurisprudence states that a 'COA' will issue only if § 2253's requirements have been satisfied, the fifth circuit still was to limit its threshold inquiry into the underlying merit of petitioner's claim(s), here, the firearm possession claim; see Slack, 529 U.S. at 481, 146 L.Ed. 2d 542, 120 S. Ct. 1595.

This inquiry does not require full consideration of the factual legal basis supporting petitioner's claim(s). Consistent with fifth circuit precedent and statutory text, the petitioner only needed to demonstrate a substantial showing of the denial of a constitutional right; see § 2253 (c) (2). Under "Barefoot", if an appellant persuades an appropriate tribunal that probable cause exists, he must then be afforded an opportunity to address the underlying merits; see Barefoot v. Estelle, 463 U.S. 880 (1983).

Thus, petitioner Williams did not have to or needed to show the fifth circuit court that he would prevail, he only needed to demonstrate, as required, that reasonable jurists would have agreed that the district court's assessment of his claim(s) was wrong. (Ibid).

Nothing in the case 'sub judice' or cases used for support when petitioner's request for COA was submitted, prevented either the district court or for that matter, the fifth circuit court from considering the questions of probable cause and the merits together. And nothing said there or here, necessarily requires full briefing in every instance in which a certificate may be granted; see Garrison v. Patterson, 391 U.S. at 466.

Section § 2253 (c)(3) is a mandatory but non-jurisdictional rule. A COA's failure to indicate a Constitutional issue does not deprive an appeals court of jurisdiction to adjudicate the appeal in this case; 140-148, 181 L.Ed. 2d at 630-635.

The COA determination under 2253 (c) required the fifth circuit, on an overview of the claim(s) in habeas and a general assessment of the merits. The appeals court was to look to the district court's application of 'AEDPA' to petitioner's claim(s) and ask whether the resolution of the claim(s) was debatable amongst jurists of reason; Miller-El v. Cockrell, 537 U.S. 322.

This threshold inquiry does not require full consideration of the factual or legal **bases** adduced in support of the claims. In fact, it forbids such treatment, and when a court of appeals side steps this process by first deciding the merits of an appeal, then justifying its denial of a COA based on its adjudication of actual merits, **it is** in essence deciding an appeal without jurisdiction. (ibid).

Petitioner did not 'abandon' his claims as alleged by the fifth circuit in its order. Abandon means to give up, or to desert, meaning to give up all claims.

Petitioner Williams did not abandon his claims as alleged by the fifth circuit in its order attached. Petitioner did follow the given rules of the court and presented his claims under plain error, see U.S. v. Olano, 507 U.S. 725 (1993).

In "Olano", the Court explained the analysis of plain error by virtue of Fed. R. Crim. P. 52(b), where plain error regards errors or defects affecting substantial rights, may be noticed, although they were not brought to the attention of the Court. Rule 52(b) vested sound discretion to correct the error with and to the fifth circuit court; see Hormel v. Helvering, 312 U.S. 552, 557 (1941) and U.S. v. Young, 470 U.S. 1, 15 (1985).

The Court of appeals was to correct the error or any error brought under 52(b) by vacating for a new trial or reversing out rightly. (ibid).

The fifth circuit mistakenly examined the claim(s) under the incorrect procedure, stating the claim(s) were abandoned.

'Abandonment' falls under the "waiver" procedure where, waiver is the intentional relinquishment or abandonment of a known right; see Johnson v. Zerbst, 304 U.S. 458 (1938), see also U.S. v. Frady, 456 U.S. 152 (1982).

[GROUND THREE]

WHETHER PETITIONER WAS DENIED RIGHT TO BE HEARD OR ACCESS TO COURT WHERE HE WAS DENIED AN EVIDENTIARY HEARING

This Court must either hold an evidentiary hearing, or grant the opportunity, where in its precedent in previous cases, held that, "a federal court must grant an evidentiary hearing to a habeas applicant under the following circumstances: (1) the merits of the factual dispute were not resolved in the state hearing, (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair hearing; see Townsend v. Sain, 372 U.S. 293 (1963).

The Court should find that an evidentiary hearing is necessary where, the factual determination made by the state is not supported by the record, for once. Additionally, a hearing is necessary where neither court held or awarded an evidentiary in petitioner's case. see UCCCRP, 9.08 and Brown v. Allen, supra. at 506.

There can not even be a semblance of a full and fair hearing unless the state court actually reached and decided the issues of fact tendered by the petitioner.

Thus, if no express findings of fact have been made by the district court, the fifth circuit court should look to "Townsend v. Sain", which the court failed or neglected to do.

Unless it is clear from the pleadings and files and record that petitioner is entitled to no relief, the statute makes a hearing mandatory; U.S. v. Cadino, 400 F.2d 56 (2nd Cir. 1968).

Machibroda v. U.S., 368 U.S. 487 (1962), discusses Fed. R. Crim. P., Rule 11. This case discusses between a "full hearing and an investigation without requiring the personal presence of petitioner. The district itself was left with the discretion to excercise their common sense"; Machibroda, supra. at 495, 496, 82 S.Ct. at 574.

This Court should conclude that, at the least, petitioner's habeas petition alleged a deprivation of constitutional rights. The question before this Court, which was presented before the fifth circuit as well, is/was whether the District Court was required to hold a hearing to ascertain the facts which were a necessary predicate to a decision of the ultimate constitutional question.

This Court acknowledged that "the problem of the power and duty of federal judges, on habeas corpus, to hold evidentiary hearings, that is, to try issues of fact anew, is a recurring one.

The Court in Brown v. Allen, 344 U.S. 443, last dealt at length with this matter. The U.S. Supreme Court granted certiorari in 1959 term to consider the question; see Rogers v. Richmond, 365 U.S. 534, 540.

It has become apparent that the opinions in "Brown v. Allen," supra., do not provide answers for all aspects of the hearing problem for the lower federal courts, which have reached widely divergent, in fact, often irreconcilable results. (Ibid).

In sum, the opportunity for redress which presupposes the opportunity to be heard, to argue and present evidence, must never be totally foreclosed; see Frank v. Mangum, 237 U.S. 309, 345-350.

PROOF OF SERVICE

I, Kacy Williams, do swear or declare under penalty of perjury, on this date, April, 13, 2022, as required by Supreme Court Rule 29, I have served the enclosed Motion For Leave To Proceed In Forma Pauperis and Petition For A Writ of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the U.S. Mail postage prepaid, or by delivery to a third party commercial carrier for delivery within 3 calender days. The names and addresses of those served are as follows:

1. U.S. Supreme Court Clerk
   1 First St, N.E.
   Washington, D.C. 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4-13-2022

(SIGNATURE)

CERTIFICATE OF SERVICE

This is to certify that the undersigned person or petitioner, have this day and date, caused to be mailed, via U.S. Mail, postage prepaid, a true and correct copy of the foregoing documents to:

1. U.S. Supreme Court Clerk
   1 First St, N.E.
   Washington, D.C. 20543

Subscribed and sworn to before me on the 13 day of April, 2022.

[signature]