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No. _____

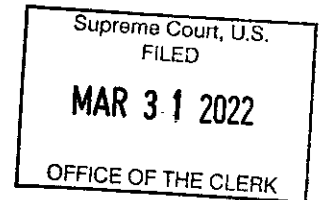
In the
Supreme Court of the United States

DAVID MEJIA
Petitioner

v.

BOBBY LUMPKIN, DIRECTOR,
TEXAS DEPARTMENT of CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONAL DIVISION

Respondent



On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

*

DAVID MEJIA #863486
WAINWRIGHT UNIT
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LOVELADY ,TX. 75851
pro se

QUESTIONS PRESENTED

Has the Fifth Circuit erred in holding fraud on the court not a substantive constitution violation of due process?

Has the Fifth Circuit erred in holding a pro se inmate to the same standard as a lawyer?

LIST OF PARTIES

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

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PRAYER

Petitioner David Mejia respectfully prays that a writ of ~~certiorari~~ certiorari be granted to review the judgement of the United States Court of Appeals for the Fifth Circuit issued on October 11, 2018.

OPINIONS BELOW

February 25, 1999 conviction, murder, Victoria county, Tx.
case no. 98-5-17,336-D-1

December 3, 2012 state habeas 11.07 denied cause no. 98-5-177336-d-2

October 11, 2017

October 11, 2017 Federal habeas corpus 2254 granted in part.
Mejia v. Stephens, 289 F.3d 799 (S.D. Tex. 2017)

October 11, 2018 Fifth Circuit vacated the District Court's judgement and rendered judgement for the state.

January 9, 2019 WRIT OF Certiorari denied April 2019

November 8, 2019 Fed. R. Civ. P. rule 60(B)(3) denied in U.S.D.C
(S.D. Tex.) CIVIL ACTION NO. 6:13-0047

October 29, 2021 application for certificate of appealability
denied cause no. 19-40884

JANUARY 14, 2022 motion for rehearing (reconsideration) denied.

JURISDICTION

THE decision of the Fifth Circuit Court of Appeals was entered on January 14, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1), 2101(e) as petitioner asserts a deprivation of his rights secured by the Constitution of the United States, as well as Supreme Court Rule 11, permitting certiorari to a United States court of appeals before judgement.

STATUTORY PROVISIONS INVOLVED

Fed.R.Civ.P. RULE 60(b)(3)&(d)(3) provides in pertinent part;

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding
On motion and just terms, the court may relieve a party or

its legal representative from a final judgment, order, or

proceedings for the following reason;

(3) fraud (whether previously called intrinsic or extrinsic),
misrepresentation, or misconduct by the opposing party.

(d)

(d) Other powers to Grant Relief;

(2) set aside a judgment for fraud on the court.

STATEMENT OF THE CASE

A. Procedural History

David Mejia was convicted of murder in Victoria County, Texas and assessed punishment of life imprisonment in cause no.98-5-17, 336-D-1. Mejia's conviction was affirmed by the Thirteenth Court of Appeals of Texas.

Mejia filed an application for writ of habeas corpus challenging his conviction and sentence. The application raised seven grounds; in the second, Mejia alleged that his attorney rendered ineffective assistance of counsel by failing to request a lesser-included offense instruction, and by failing to request a "sudden-passion" instruction at the sentencing phase. On December 3, 2012, the state habeas application was then forwarded to the Texas Court of Criminal Appeals, which denied the writ without a written opinion.

Mejia then filed his federal habeas corpus petition. The district court issued its opinion and final judgment ordering that Petitioner's Amendment to Petition for writ of Habeas Corpus, deemed a motion for summary judgment, was granted in part as to Petitioner's claim that counsel rendered constitutionally ineffective assistance when he failed to request additional jury instructions. see *Mejia v. Stephens*, 289 F.Supp.3d 799 (S.D.Tex.2017)

On November 5, 2017, the State filed its notice of appeal.

On October 11, 2018 the Fifth Circuit vacated the district court's judgment and rendered judgment for the state. see *Mejia v. Davis*, 906 F.3d 307 (5th Cir.2018). The Fifth Circuit concluded 'that (1) given [defense counsel's] all or nothing strategy, he reasonably declined a 'dubbe-edged' manslaughter instruction that could have lowered Mejia's chances of an acquittal; (2) even assuming [defense counsel's] should have sought a sudden passion instruction, it is unlikely that

unlikely that the instruction would have change Mejia's sentence; and(3)crucially, neither conclusion would have been an objectively unreasonable application of Strickland by the state habeas court.'

on January 9,2019 Mejia filed in this court his Wirt for a certiorari which the Supreme Court denied. Then Mejia filed his Fed.R.Civ.P. rule 60(b)(3) relief from a final ,judgment,order, proceeding motion seecivil action no.6:13-0047 denied in the S.D.Tex. on August 23,2019 . Then Mejia written the Fifth Cir-cuit court a letter to the Fifth Circuit which the court deem his application for a certificate of appealiblity which was dnied on October 29,2021 .Then on January 14,2022 .Mejia's motion for rehearing en banc((reconsideration) denied.

This petition follows.

B. Statement of relvant facts

During a bar fight in 1998 Mejia stabbed Torres in the heart with a steak knife.The state appealate court summerized the facts of the murder as follows;

The States evidence shows that[Mejia] went with JohnnyArce to a bar in order to help him fight some people .A fight resulted including several people ,including [Mejia]and the victim, Marcos Torres.During the fight Marcos Torres was stabbed in the heart and killed. Minutes later [Mejia] told his sister,"I cut him." and"[he]had a gun'."It was either my life or his." Affterwards he went to an apartment where he told John Gomez that he had "stabbed some dude." [Mejia] showed Gomez how he had stabbed the victim; he reach back with his left hand and pulled the knife out of his left rear pant pocket and stabbed forward.[Mejia] indicated that he had stabbed him in the middle of the chest. Lorenzo Dominguez was present when [Mejia] arrived at the apartment. He heard [Mejia] say, "I got the motherf---,.Istabbed him".

The medical examiner's testimony showed that Torres died from a stab wound to the heart.He testified that the knife used to kill Torres eas capable of causing death or serious bodily injury

[Mejia] testified that when the fight started Torres swung at him and he pushed Torres back twice. Torres lifted up his shirt, revealing a gun. As Torres approached him and started pulling out the gun [Mejia] pulled a knife and stabbed him. His testimony was that he did not mean to stab him. He admitted that he could have turned and run away from Torres without pulling the knife.

On June 20, 1998 the District Court of Victoria County, Texas appointed Alex Luna to represent Mejia. At Mejia's trial for murder, Luna did not request, and the trial court did not give any jury instructions regarding lesser included offense of manslaughter, which would have carried a maximum prison sentence of twenty years. Rather, he relied entirely on the argument that Mejia had acted in self-defense. At the charging conference for the guilt-innocence phase, when the court explicitly noted that the charge did not submit any lesser included offenses to the jury, Luna confirmed that he wanted to submit the charge without any such instructions?

THE COURT: No further requested instructions?

MR. LUNA: No further requested instructions.

THE COURT: This does not include submission of any lesser-anything on any lesser included offenses to the jury, based upon the testimony and the position-and self-defense instruction. This is the Charge of the Court that you want to submit; is that correct?

MR. LUNA: That is correct.

The jury rejected self-defense and returned a verdict of murder.

After Mejia's conviction was affirmed on direct appeal, Mejia filed a state habeas petition claiming that Luna rendered ineffective assistance of counsel when he failed to request jury instructions on manslaughter and sudden passion, Luna provided an affidavit stating that exclusive theory of the case was self-defense :

GROUND TWO: Trial counsel rendered ineffective assistance by failing to request lesser included instructions on criminal negligent homicide, manslaughter, and sudden passion in support [of] the evidence presented during trial.

RESPONSE: The strategy of the whole trial was self-defense. This was brought out in voir dire and in questioning of all the witnesses. The testimony of the whole trial centered around applicant's contention that the deceased had a gun. My recollection was that applicant's position was that he was not guilty of any thing[sic] because of his self-defense strategy. That was why he plead[ed] not guilty and agreed to testify on his behalf on this contention of self-defense. There was no evidence of any provocation on behalf of the deceased. Applicant had gone to the confrontation with the knowledge of the purpose and had armed himself with the weapon, a knife.

The state habeas rejected Mr. Mejia's claim. The habeas court's opinion read, in its entirety, as follows:

On the 3rd day of December, 2012, the Trial Court determines as follows after having reviewed the pleadings and papers filed in this application, the Reporter's record of the trial, after viewing State's Exhibit (videotape statement of David Mejia) admitted at trial, and after using the Court's personal recollection: [The affidavit of applicant's trial attorney ALEX LUNA is credible:

applicant's attorney provided effective assistance;

Applicant's ground 3 claim should alternatively be barred by the doctrine of laches if it is determined that ALEX LUNA's response in his affidavit is not specific enough.

The District Clerk is ORDERED to now forward the application and other filed documents to the Court of Criminal Appeals with the Trial Court's Findings of Facts and conclusions of Law.

The Texas

The Texas Court of Criminal Appeals denied the writ without a written order.

REASON FOR GRANTING THE WRIT.

To establish fraud under Fed.R.Civ.Rule, 60(b)(3)(6) Requires proof of fraud, misrepresentation, or misconduct by clear and convincing evidence. This evidence was brought to the attention of the Fifth Circuit Court of Appeals that fraud was committed in their court room by the attorney general office of the state of Texas to obtain the favorable ruling they receive. The proof was the court documents that were filed through out their appeal to the Fifth Circuit, see appeal brief of Lorie Davis doc#00514285720 pg.21 filed 12/16/17 case no. 17-41137 and s.h.c.exhibit 1 affidavit of ALEX LUNA. When these two documents are viewed side by side the fraud is seen where the state (Lorie Davis) intentionally deleted the whole line that undermined their whole justification for self defence and especially the all or nothing that was claimed by the state as ATTORNEY ALEX LUNA'S TRIAL STRATEGY OF SELF DEFENCE - see report and recommendation of U.S.mag.judge JONN R.FROESCHNER case no.6:13-cv-00047 Doc#22. pg.4-5 filed TX.S.D. on 06/30/2015 is the proof for the motivation for the respondent LORIE DAVIS TO COMMIT THE FRAUD THAT WAS DONE. Which was the calculated move for their favorable ruling they obtain, see MEJIA V.DAVIS, 906 F.3d 310 opinion. Specifically, we conclude that (1) given Luna's all or nothing strategy, he reasonably declined a "double edged" manslaughter instruction that could have lowered MEJIA'S chance of an acquittal. When all this evidence was presented to the 5th cir. court of appeals that they made a judgement that was obtained by fraud the 5th cir. dismissed petitioners request for a c.o.a. for his Fed.R.Civ rule 60(b) (3)(6). Ruling that petitioner failed

to show a substantive constitutional violation and that the issue of fraud could be further argued amongst reasonable jurists.

To address this issue the Supreme Court has long held in Haines v. Kerner, 404 U.S. 512, 92 S.Ct. 594; 30 L.Ed.2d 652 (1972).

A COMPLAINT SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM, UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM, WHICH WOULD ENTITLE HIM TO RELIEF. ALSO IN HAINES V. KERNER, THE SAME CASE AND RULING THE S.C.T. HELD THAT ALLEGATIONS OF A PROSE COMPLAINT TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS DRAFTED BY LAWYERS.

THE Fifth Cir. ruling that petitioner failed to show a substantive constitutional violation concerning petitioner's claim of fraud when shown that the quoted affidavit in the state's appeal brief case no. 17-41137, tx.s.d.no. 00514284720 pg. 21 filed 12/26/2017 was false. Its ruling went against the U.S. holding in Napue v. Illinois, 360 U.S. 269 [1] First, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the Fourteenth Amendment, Mooney v. Holohan, 294 U.S. 103 [citations omitted]. The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears. Alcorta v. Texas, 355 U.S. 28, 2 L.Ed.2d 9, 78 S.Ct. 103 United States ex rel. Thompson v. Baldi, 413 (CA3 Pa) 221 F.2d 763; United States ex rel. Almeida v. Baldi, 195 F.2d 815, 33 A.L.R.2d 1407; United States ex rel. Montgomery v. Regen (DC Ill) 86 F Supp 382. see generally annotation, 2 L.Ed.2d 1575.

This constitutional violation of the Fourteenth Amendment is also addressed in BRADY V. MARYLAND 317 US 86. When making its ruling

ruled; In Pyle v. Kansas, 317 US213, 215, 216, 8 Led 214, 216 63 S.Ct. 177, We phrased the rule in broader terms; Petitioner's papers are inexpertly drawn but set forth allegations that his imprisonment resulted from prejured testimony, knowingly use by the state authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the federal constitution, and if proven would entitle petitioner to release from his present custody. Mooney v. Holohan, 294 US103.

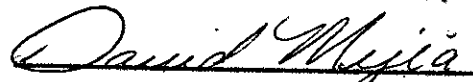
These rulings are the mirror reflection of the petitioners case to the Supreme Court in this writ for Certiorari. In petitioner's Fed.R.Civ.Pro. rule 60(b)(3). That was the reason for a Certificate of Appealability. The petitioner brought forth to the attention of the Fifth Circuit that the judgement they made in favor of the state was induced by fraud because the appeal brief by the state contains false evidence where the state quoted trial lawyer Alex Luna affidavit which was s.h.c. exhibit #1 and intentionally; knowingly with drew "subtracted" a whole sentence which is the same sentence that was pointed out by US Mag. John R. Froeschner and undermined the states whole justification for self defence and thier justification of thier all or nothing trial strategy argument to the U.S.D.C.S.D.TX. see case no. 6:13-cv-00047 U.S.D.C S.D.TX. DOC#22 pg. 4-5. that statement when quoted in the states appeal brief was evidence by the state to lead the Fifth Circuit Court down thier road to obtain the ruling that trial lawyer Alex LUNA proceeded a all or nothing trial strategy was false because trial lawyer Alex Luna was changed by the state so the Fifth Circuit would not see what the lower courts saw when they done thier report and recommendation as well as ruling this was the motive for the state to take out that line and commit fraud on the court. For this reason this Honorable SUPREME COURT should hear this petitioner's WRIT FOR CERTIORARI.

The ruling made by the Fifth Circuit Court of Appeals goes against Supreme Court rulings. This case would then set a precedent case for all cases that would then make it legal to use false evidence to obtain a favorable ruling by the way of fraud on the court if this writ is not addressed. It would then send the correct message if addressed that you can't deprive a U.S. citizen of their FOURTEENTH AMENDMENT right of due process and equal protection by the use of fraud.

CONCLUSION

For the reasons stated above, the petition for a Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,



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pro se.

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