

No. 22-5284

Supreme Court, U.S.
FILED

MAR 04 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Duntae Fagans — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals 5th Circuit

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

PETITION FOR WRIT OF CERTIORARI

Michael Duntae Fagans

(Your Name)

Wainwright Unit

2665 Prison Road #1

(Address)

Love Lady Texas 75851

(City, State, Zip Code)

936-636-7321

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1). Whether Fagans is entitled to relief, or an evidentiary hearing, where the Court of Appeals, Fifth Circuit and the U.S. District of the Eastern District of Texas decision conflicts with other court(s) opinion: where Fagans Claim of Actual Innocence accompanied by a claim of Constitutional Violation, due to a void Indictment, Denial of Effective Assistance in the proceedings, Improper Enhancement in the case and No Affirmative finding of a weapon.....and his Due Process Rights of the 5th, 6th and 14th Amendment, that is being Barred from review and relief.
- 2). Whether Fagans is entitled to relief, or an evidentiary hearing, where Fagans claim rest upon a Brady violation, due to his clear and convincing evidence present in the case as exhibits that is being barred from review and relief.
- 3). Whether Fagans is entitled to relief, or an evidentiary hearing, where Fagans was denied Federal Right, due to a "Speedy Trial" that is being barred from review and relief.

LIST OF PARTIES

☐ 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:

Fagans v. Lumpkin No. 6:19-cv-279
United District Court for the Eastern District
Judgment entered: March 2, 2021

Fagans v. Lumpkin No. 21-40214, United States Court
of Appeals, Fifth Circuit Judgment entered; December
6, 2021; Dkt. 1/24/2022

RELATED CASES

- 1). Barter v. Wingo 404 U.S. 518, 33 L.Ed.2d. 101, 92 S.Ct. 2182 (1982)
- 2). Cleveland v. Bradshaw, 693 F.3d. 626. (CA 6 2012)
- 3). Faretta v. California, 422 U.S. 808, 45 L.Ed.2d. 562 92 S.Ct. 2525 (1975)
- 4). Finley v. Jonson-243 F.3d. 215 (5th Cir 2001)
- 5). Miller v. Dretke 420 F.3d 356-366 (5th Cir 2005)
- 6). Milke v. Ryan 711 F.3d. 998 (9th Cir 2013)
- 7). Perez v. State, 261 s.w.3d. 760 (Tex. App. 2008)
- 8). Powell v. Alabama 287 U.S. 77 L.Ed.2d. 158, 53 S.Ct. 55 (1932)
- 9). United States v. Wright 43 F.3d. 491 (10th Cir. 1994)

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- APPENDIX C** - Decision of the United States District Court for the Eastern District of Texas; Judgment entered: 3/2/21 No. 6:19-cv-279-JDK-JDL
- APPENDIX D** - Decision of the United States Court of Appeals Fifth Circuit Judgment Entered 12/6/2021 and Dkt. 1/24/2022 No. 21-40214
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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 D to the petition and is

☐ reported at N/A; 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 E to the petition and is

☐ reported at N/A; 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 A, B to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 12/6/2021 Dkt. 1/24/2022

☐ 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: N/A, 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 N/A (date) on N/A (date) in Application No. N/A A N/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 3/2/2021.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

"No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without Due Process of Law; nor shall private property be taken for public use without just compensation.

Sixth Amendment

In all criminal prosecution the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted

with the witness against him; to have compulsory process for obtaining witness in his favor and to have the assistance of counsel for the defense.

Fourteenth Amendment

All person 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 states deprived any person of Life, nor deny to any person within its jurisdiction to Equal protection of the law.

28 U.S.C. 2244(b)(2)(B)(i)(ii)

B(i): the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and

(ii): the fact underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear convincing evidence, that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. 2254(d)(1-2)

the state court decision 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. 2254(d)(1)

the state court decision resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in the state court proceedings. 2254(d)(2).

Standard of Review

In Faretta v. California, 422 U.S. 808, 45 L. Ed. 2d 562, 95 S.Ct. 2525 at 2527 (1975).

The Sixth and Fourteenth Amendment of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to assistance of counsel before he can be validly convicted and punished by imprisonment. This clearly constitutional rule has emerged from a series of cases decided here over the last 50 years. The question before us now is whether a defendant in a state criminal trial has a right.... a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so.....page 2541....

The defendant and not his lawyer or the state, will bear the personal consequences of a conviction.

In Schlup, an actual innocence standard in two ways requirement by the AEDPA, First 28 U.S.C. 2244(b)(2)(B)(i)-requires that the factual predicate for the claim could not have been discovered previously through the exercise of due diligence.....There is no requirement under Schlup, that the factual claim was not discoverable through the exercise of due diligence. Second, 28 U.S.C. 2244(b)(2)(B)(ii)-requires that the fact underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, But for the constitutional errors, no reasonable factfinder would have found the applicant guilty of the underlying offense.....In Schlup, requires only that an applicant show that it is more than not that no reasonable factfinder would have found him guilty...

Under Rule 9(b)-provides that a judge may dismiss a habeas petition."if the judge finds that it fail to alleges new or different grounds for relief and the prior determination was on the merits,or if new and different grounds are alleges, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

In McCleskey v. Zant,the Supreme Court determined that raising a new or different claim in a petition constitutes an abuse of the writ unless the petitioner can demonstrate "both cause for failure to assert the claim in an earlier petition and prejudice" if the court fail to consider the new claim..499 U.S. 467,111 S.Ct. 1454,1470.130 L.Ed.2d.517(1991);Saahir v. Collins 956 F.2d.115(5th Cir.1992);Woods v.Whitley,933 F.2d. 321,323(5th Cir. 1991)....

The cause standard require a habeas petitioner to show that "some objective factor external to the defense prevented the petitioner from raising the claim..McCleskey 111 S.Ct. at 1470(quoted Murray v. Carrier 477 U.S.478, 106 S.Ct. 2639,2645,91 L.Ed.2d.397(1986)).

Example of an external impediments include active government interference or the reasonable unavailability of the factual or legal basis for the claim..111 S.Ct.at 1472.

If the petitioner cannot demonstrate cause,He may ultimately prevail if he can demonstrate that a fundamental miscarriage of justice would result from not entertaining the new habeas claim....

The Constitution requires a fair trial, and one essential element of fairness is the prosecution obligation to turn over exculpatory evidence. see United States v. Bagley 473 U.S.667,674-75,105 S.Ct. 3375,87 L.Ed.2d.481(1985);Giglio,405 U.S.at 153-55 Brady,373 U.S.at 87..

The state knew about this misconduct, but did not disclose it, despite the requirement of Brady v. Maryland,373 U.S.83,87,83 S.Ct.1194,10 L.Ed.2d.215 (1963) and Giglio v. United States,405 U.S.150,153-55 92 S.Ct.763,31 L.Ed.2d.104(1972).

The government has a Brady obligation to produce any favorable evidence in the personnel records of an officer. A defendant doesn't have to make a request for exculpatory or impeachment evidence. The duty to disclose exculpatory evidence is applicable even though there has been no request by the accused and the duty encompasses impeachment evidence as well as exculpatory evidence. The government has a duty to examine personnel files upon a defendant's request for their production. if the prosecution isn't sure whether material in a personnel file rises to the Brady threshold, it may submit the information to the trial court for an in camera inspection. A prosecutor anxious about tracking too close to the wind will disclose a favorable piece of evidence.

In McQuiggin v. Perkins 569 U.S.383;133 S.Ct.1924 (2013)-To invoke the miscarriage of justice exception to the AEDPA, a petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.

REASONS FOR GRANTING THE PETITION

Where the United States Court of Appeals, Fifth Circuit and the U.S. District for the Eastern District court of Texas decision to fail to grasp the significance of the petitioner Actual Innocence Claim accompanied by a claim of constitutional violation, where Both Court ignored the claims and documents that contained Judicial Findings rather than mere allegations.

CONCLUSION

The petition for a writ of certiorari should be granted.

As vacate of the Judgment and Sentence with prejudice and release.

Respectfully submitted,



Date: 5-09-2022