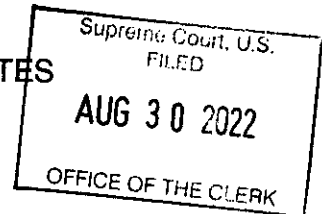


No. 22-5560

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



TYRONE LEARONE MCCURDY — PETITIONER  
(Your Name)

vs.

BOBBY LUMPKIN, DIRECTOR, TEXAS  
DEPARTMENT OF CRIMINAL JUSTICE RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TYRONE LEARONE MCCURDY

(Your Name)

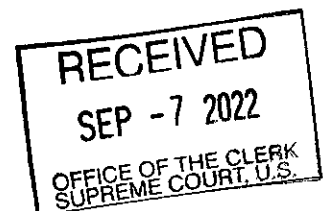
3872 FM 350 South

(Address)

Livingston, TX 77351

(City, State, Zip Code)

(Phone Number)



### **QUESTION(S) PRESENTED**

- I. IF THE PROSECUTOR MAKES A PRETRIAL OFFER OF LENIENCY TO A WITNESS IN EXCHANGE FOR THAT WITNESS'S TESTIMONY AGAINST THE DEFENDANT, AND THE WITNESS REFUSES THE OFFER, YET TESTIFIES AT THE DEFENDANT'S TRIAL THAT THE PROSECUTOR MADE NO OFFERS, HAS THE PROSECUTOR SUBORNED PERJURY?
  
- II. IF A PROSECUTOR MAKES A PRETRIAL OFFER OF LENIENCY TO A WITNESS IN EXCHANGE FOR THAT WITNESSES' TESTIMONY AGAINST THE DEFENDANT, AND SUPPOSING THE WITNESS REFUSES THE OFFER, DOES THE PROSECUTOR HAVE AN OBLIGATION UNDER BRADY TO DISCLOSE THAT PRETRIAL OFFER?

## 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:

## RELATED CASES

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### STATUTES AND RULES

### OTHER

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☒ is unpublished.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 B to the petition and is

☐ reported at \_\_\_\_\_; 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was (uncertain).

☐ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

No state shall deprive any person of life, liberty, or property, without due process of law. Amendment XIV, U.S. Constitution.



## STATEMENT OF THE CASE

Petitioner was tried and convicted of murder following a trial by a jury. The jury sentenced Petitioner to fifty(50) years imprisonment at the Texas Department of Criminal Justice- Correctional Institutions Division.

At Petitioner's trial, Petitioner's codefendant testified as a witness for the State. During his testimony he was asked by the prosecutor whether the prosecutor had offered him anything in exchange for his testimony. The codefendant answered "No."

After Petitioner was convicted, the codefendant went before the same trial judge who had presided over Petitioner's case and tried to have the judge agree to reduce his murder charge to a manslaughter with a sentencing cap of 5 years. The trial judge wouldn't agree to sign off on the deal. The trial judge admonished the State for failing to disclose that it had made an offer of leniency to the codefendant to Petitioner's attorney prior to the codefendant's testimony at Petitioner's trial.

The State was adamant that the judge agree to the deal, and the issue of the judge not agreeing to the deal went to the Court of Appeals. The Court was ordered to sanction the deal.

During state habeas corpus proceedings, Petitioner claimed that the State's failure to disclose the offer of leniency prior to Petitioner's trial, and the State's failure to correct the codefendant's testimony that the State had made him no offers in exchange for his testimony constituted a violation of of this Court's decisions in Brady v. Maryland, and Giglio v. United States, as well as his right to due process of law.

The State argued that it did not have to disclose the offer because, supposedly, the codefendant had refused the offer. Yet, at an evidentiary hearing during the State habeas proceedings, the codefendant testified that he never refused the offer, but was told that the offer could not be formalized until after he testified.

The codefendant's mother testified that the State had made a pretrial agreement to reduce the codefendant's charge to a manslaughter and to a five year sentencing cap prior to Petitioner's trial.

The codefendant's attorney stated that the State never intended to take the codefendant's case to trial but instead always intended to make an agreement in exchange for his testimony.

The State and federal habeas courts made findings that Petitioner failed to prove that the State had made any offers that needed to be disclosed, and that Petitioner failed to prove that the State suborned perjury when it had the codefendant testify that the State had made no offers to him in exchange for his testimony. (State Habeas Findings & Federal Magistrate's Report and Recommendations)

## REASONS FOR GRANTING THE PETITION

Review should be granted because the lower Courts' rulings that the State was not obligated to disclose the offer of leniency because the codefendant had supposedly refused the offer is contrary to this Court's decision in Giglio v. United States ,405 U.S. 150 (1972);

Review should also be granted because the lower Courts' rulings are contrary to this Court's decision in Napue v. Illinois, 360 U.S. 264 (1959)

Review should be granted because the lower courts' rulings are contrary to this Court's decision in Brady v. Maryland,373 U.S. 83 (1963).

It is well established law that the State must disclose offers of leniency to its witnesses to opposing counsel. It is just as well established that prosecutors have a duty to correct known false testimony and not to suborn perjury.

Petitioner was convicted largely in part to the testimony of the codefendant, which both the prosecutor and the codefendant counsel adamantly argued at the codefendant's sentencing hearing.

When you have the codefendant stating he had a pretrial offer and deal; the codefendant's mother stating the prosecutor had made a pretrial offer and deal with her son; the prosecutor admitting she had made a pretrial offer with the codefendant; the codefendant's attorney stating that there was always an understanding that the codefendant would make a deal in exchange for testifying; and the sentencing judge rejecting the deal based on his belief that the State had violated Brady by not disclosing the deal to Petitioner's attorney, there is no support for the habeas courts' rulings against Petitioner. Moreover, those rulings are in direct conflict with, and highly contrary to, this Court's precedence.

Furthermore, the lower habeas courts' decisions are so far departed from this Court's precedence as to justify this Court's exercising of its supervisory authority.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Typhon Leroy McIndoe

Date: August 21, 2022