

No. 22-6609

ORIGINAL

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

JAMES D THOMAS

— PETITIONER

(Your Name)

vs.

UNITED STATES of AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT of APPEALS for the SIXTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

JAMES D THOMAS

(Your Name)

FCI RAY BROOK PO BOX 900

(Address)

RAY BROOK, NY 12977-0900

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1) DID THE SIXTH CIRCUIT COURT OF APPEALS VIOLATE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHT BY DENYING PETITIONERS 28 USC § 2255 MOTION TO VACATE, CORRECT OR SET ASIDE SENTENCE PERTAINING TO A BRADY VIOLATION? WAS PETITIONER'S RIGHT TO DUE PROCESS VIOLATED?
- 2) DID THE COURTS BELOW COMMIT REVERSIBLE ERROR, DENYING PETITIONER'S 28 USC § 2255 MOTION TO VACATE, CORRECT OR SET ASIDE SENTENCE, WITHOUT CONDUCTION [A]N EVIDENTIARY HEARING TO RESOLVE FACTUAL DISPUTES?

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:

The United States Court of Appeals for the Sixth Circuit

RELATED CASES

James Thomas v USA, No: 5:21-cv-02077 (Sixth Circuit)

James Thomas v USA, No: 5:18-cr-00461 (District Court of Ohio)
Judgment entered August 18, 2022

USA v James Thomas, No: 5:18-cr-00461 (Appeal Ct 6th Circuit)

James D Thomas v USA, No 5:18-cr-00461 (6th Cir Dist Ct)
Judgment entered March 29, 2022

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COA denial of § 2255;
- APPENDIX B : March 29, 2022, Decision of 6th Cir Dist Ct, denial
of § 2255;
- APPENDIX C : April 20, 2021, Decision of 6th Cir Court of Appeal
denial of Direct Appeal;
- APPENDIX D : October 12, 2022, Decision of 6th Cir Court of App;
denial of re-hearing;
- APPENDIX E : Letter from Attorney Jenkins, with oral hearing
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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 judgement below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States 6th Circuit Court of Appeals denial of COA appears at Appendix A to the petition and is reported at 2022 U.S. App. LEXIS 23148.

The opinion of the United States 6th Circuit District Court denial of 2255 Motion to Vacate appears at Appendix B to the petition and is reported at 2022 U.S. Dist. LEXIS 57535.

The opinion of the United States 6th Circuit Court of Appeals denial of the direct appeal appears at Appendix C to the petition and is reported at 2021 U.S. App. LEXIS 11884.

The opinion of the United States 6th Circuit Court of Appeals denial of rehearing appears at Appendix D to the petition and is reported at 2022 U.S. App. LEXIS 28409.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 18, 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: October 12, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

1. The Fifth Amendment of the United States Constitution provides:

"No person shall be held to answer for a capital, or otherwise 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 offence 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."

2. The Fourteenth Amendment of the United States Constitution provides:

Section 1. [Citizens of the United States.] "All persons 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 State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 2. [Representatives-Power to reduce apportionment.]

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged,

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Section 3. [Disqualification to hold office.]"No person shall be a Senator or Representative of Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an Officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in the insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by vote of two-thirds of each House, remove such disability."

Section 4. [Public Debt not to be questioned--Debts of the Confederacy and claims not to be paid.]"The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

Section 5.[Power to enforce amendment.]"The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

3. The Statutes involved (and under review) are, Title 18, United States Code, Federal Rules of Criminal Procedure, Rule 16(c)(1)(2)-(c) Continuing Duty to Disclose.

"A party who discovers additional evidence or material before or during trial must promptly disclose its

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

existence to the other party or the court if:(1) the evidence or material is subject to discovery or inspection under this rule; and (2) the other party previously requested, or the court ordered its production."

- 4.The Statute under which Petitioner sought habeas corpus relief was 28 U.S.C. §2255 which states in pertinent part:

§2255 Federal Custody; remedies on motion attacking sentence.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgement was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the Constitutional Rights of the prisoner as to render the judgement vulnerable to collateral attack, the court shall vacate and set aside the judgement and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

STATEMENT OF THE CASE

In July 2018, agents from the Pennsylvania Office of the Attorney General (PA AG) contacted agents of the Cleveland, Ohio Drug Enforcement Agency (DEA) and advised them that Sondra McQuillen, a subject of one of their investigations, was distributing Methamphetamine in Clearfield County, PA. The PA AG agents believed that McQuillen's supplier was in Akron, Ohio.

As part of their investigation, the PA AG agents applied for and obtained a warrant to collect nonconsensual interceptions on Sondra McQuillen and Jason Merritts cell phones. Between July 1, 2018 and July 26, 2018, Detective Fields swore in his affidavite for a search warrant, to a series of phone interceptions. SEE: Government's response in opposition to petitioner's \$2255 Motion to Vacate, Pg.5, Par. 3 through Pg. 8, Par.1.

Surveillance was conducted on July 11, 2018, in which agents observed Sondra McQuillen visit the Top Notch Barber Shop, petitioner's place of employment.

On July 16, 2018, agents conducted a trash pull at petitioner's home on Patterson Avenue in Akron, Ohio. They discovered three disposable gloves and two segments of foodsaver vacuum seal plastic. Although the government says the agents "located" several pieces of mail confirming petitioner lived at this address, they failed to mention that no identifying mail was found in the trash, that linked the trash to the petitioner.

On July 26, 2018, agents surveilled Sondra McQuillen drop off a passenger at a gas station, then visited petitioner's residence at 509 Patterson Avenue in Akron, Ohio for approximately thirty minutes, and then drove back to Clearfield County, PA.

Approximately three hours later, a search was conducted on Sondra McQuillen's vehicle back in Clearfield County, PA. The agents recovered approximately six ounces of methamphetamine, 1/8 ounce of cocaine, and one ounce of marijuana. Sondra McQuillen, nor the passenger gave any statement as to where the drugs came from. Sondra McQuillen was not a Confidential Informant (CI), nor did she wear a wire or camera to evidence any drug transactions.

STATEMENT OF THE CASE (CONTINUED)

That same day, July 26, 2018, DEA agents executed a search warrant at petitioner's Patterson Avenue residence. Agents recovered crystal methamphetamine, cocaine, a large amount of U.S. currency, and numerous firearms.

Later that day, DEA agents obtained a second search warrant and executed it at the Top Notch Barber Shop. During that search, agents recovered a handgun and ammunition, methamphetamine, cocaine, two digital scales, and marijuana.

REASONS FOR GRANTING THE PETITION

BRADY VIOLATION

The Sixth Circuit Court of Appeals denial of petitioner's \$2255 Motion to Vacate concerning the Brady Violation is in direct conflict with this Court's decision in *Murray v. Carrier*, 477 U.S. 478, 91 L.Ed 2d 397, 106 S.Ct. 2639(1986); *Brady v. Maryland*, 373 U.S. 83(1963); *United States v. Bagley*, 473 U.S. 667, 682(1985); *Kyles v. Whitley*, 514 U.S. 419(1995); *Mcleskey v. Zant*, 499 U.S. 467, 113 L.Ed 2d 517, 111 S. Ct. 1454(1991). The decision is also in direct conflict with other circuit court decisions in *Tate v. Wood*, 963 F.2d 20(2nd Cir 1992); *Alcorn v. Smith*, 647 F. Supp. 1402(E.D.Ky 1986); *Smith v. Black*, 904 F.2d 950(5th and 11th Cir 1990); *Williams v. Whitley*, 940 F. 2d 132 (5th and 11th Cir 1991). The record in this case will prove the Brady violation and prosecutorial misconduct for deliberate concealment of discovery material and favorable to the defense.

In March of 2021, the petitioner, in custody in Clearfield County Prison, in Pennsylvania, received discovery from his attorney, Joe Ryan, pertaining to a State case stemming from this instant case. Within this discovery, the petitioner found evidence that the Federal prosecutor, Christopher Joyce, was in possession of discovery that the petitioner specifically requested in a Pro Se Motion to Compel in May 7, 2019. This discovery is known as the Pennsylvania Investigation Reports.

The Sixth Circuit Court of Appeals in their August 18, 2022 Opinion denying petitioner's COA application states on Pg.6, Par.4;"Moreover, the court found, Thomas's attorney was aware of the reports and had requested and received the reports from the prosecution." That ruling is in error because the record will show that, at the time of discovery, the prosecution was not in possession of the Pennsylvania Investigation Reports.

The petitioner's first attorney, Mr. Kersey, filed notice for discovery on August 28, 2018. The prosecution discovery response was on September 4, 2018, seven days later. In reviewing Detective Fields search warrant affidavit, petitioner noticed incorrect background information and phone call accusations and asked Mr. Kersey where did Detective Fields get the information. Mr. Kersey's response was that the prosecution has more discovery they are not giving us. Ultimately, a

REASONS FOR GRANTING THE PETITION (PAGE 2)

Motion to Compel was filed Pro Se on May 7, 2019 requesting specifically the Pennsylvania Investigation Reports. On May 13, 2019, the prosecution turned over photos and a list of phone calls from Det. Fields search warrant applications, not the Pennsylvania Investigation Reports.

On August 5, 2019, Attorney Kersey was removed from the case and replaced by J. Jenkins. On that same day, Attorney Jenkins filed for discovery. There was no response on record from the prosecution concerning Mr. Jenkin's discovery request. On November 19, 2019, a Franks Hearing was held.

The Pennsylvania Investigation Reports are material because Detective Fields says that he relied on these reports to formulate his affidavit for the search warrant for petitioner's home. SEE F.H. transcripts, Pg. 14, # 16-21. Detective Fields could not formulate his search warrant affidavit without these reports. The reports are truth-seeking documents, and are material to the case. The petitioner requested these reports in a Motion to Compel, as previously shown, in order to prepare a proper defense for the upcoming Franks Hearing. The petitioner was denied his rights to review this discovery which the prosecution had in its possession at the time of the Franks Hearing. SEE. U.S. v. Patrick, 985 F.Supp. 543(3rd Cir 1997). This suppression violated petitioner's due process. SEE. Smith v. Black, 904 F. 2d dt 963 n.2.(quoting Bagley, 473 U.S. dt 682-683(opinion of Blackmun,J.)); Williams v. Whitley, 940 F. 2d dt 133.

While going through the discovery from Pennsylvania case in March of 2021, petitioner came across emails between the federal prosecutor and the PA AG. One dated September 6, 2019, the Federal prosecutor was requesting the Pennsylvania Investigation Reports. SEE petitioner's §2255 reply brief, Exhibit H-1. Another email dated September 16, 2019, the PA AG responds with the password to the thumb drive and instructions for the federal prosecutor to forward the discovery to petitioner's new counsel. SEE petitioner's reply brief, Exhibit H-2. The record now shows the prosecution possessed discovery sometime after September 16, 2019.

The prosecution, in their §2255 reply brief states on Pg. 21 Section E: "As a preliminary matter, counsel for the defense was aware the prosecution was in possession of these items and that they were available for inspection." The prosecution also goes as far to say on the same page and section:

REASONS FOR GRANTING THE PETITION (PAGE 3)

"The reports at issue were also in the possession of prior counsel for the defense, Mr. Kersey, which were provided to him specifically at his request." This is where the prosecutorial misconduct and deliberate concealment rears its ugly head. Mr. Kersey was removed from the case on August 5, 2019. The PA AG responded by email giving Mr. Joyce the password and instructions to pass the discovery to petitioner's new counsel on September 16, 2019. What reason would the prosecution have to give the discovery to Mr. Kersey over a month after he was removed from the case, but, not give it to Mr. Jenkins whom is actually petitioner's attorney at this point? There is none.

The prosecution is not being honest. The record does not support any evidence that prosecutor disclosed of this discovery to the defense, nor the court. Petitioner prays this Honorable Court will view the record instead of giving the court the deference it's relying on. *Donnelly v. DeChristoforo*, 416 U.S. 637, 40 L Ed 2d 431, 94 S.Ct 1868(1974); *Mesarosh v. United States*, 352 U.S. 1, L Ed 2d 1, 77 S.Ct. 1(1956).

This non-disclosed discovery, (Pennsylvania Investigation Reports) that the prosecution concealed from the defense contained pertinent impeachment evidence as to false statements and phone conversations Detective Fields swore to in his search warrant application. *U.S. v. Bagley* 473. The prosecution knew that the reports in the hands of Mr. Jenkins, a thirty-five year seasoned defense attorney, the Frank's Hearing would have produced a suppression of the evidence, *Strickler v. Greene*. This led the prosecution to deliberately concealed this discovery from the defense. The absense of the requested discovery crippled petitioner's opportunity for a fair Frank's Hearing, *Youngblood v. W. Virginia*, 547. *Kyles v. Whitley*, 514 U.s. 419, 434, 131 L Ed 2d 490, 115 S.Ct. 1555(1995).

As outlined in petitioner's \$2255 reply brief, Pg. 15, Par. 2, lists a series of phone calls that Detective Fields swore to in his affidavit for the search warrant. A search for these calls in the Pennsylvania Investigation Reports shows they do not exist, nowhere. Detective Fields claims to have gotten the call information from the Pennsylvania Investigation Report. These series of calls appear to be

REASONS FOR GRANTING THE PETITION (PAGE 4)

as a false timeline of calls to aid Detective Fields in securing the search warrant from the magistrate. The calls attribute guilt towards the petitioner that does not exist. But, Mr. Jenkins did not have the opportunity to address this at the Frank's Hearing, U.S. v. Castano, 906 F. 3d 458, 466(6th Cir 2018); U.S. v. Agurs, 427 U.S. 97, 49 L. Ed. 2d 324, 96 S. Ct. 2392(1976).

It's well documented that the petitioner's Due Process rights were violated in this case. The prosecution is also in violation of Criminal Rule 16(c)(1)(2); Continuing Duty to Disclose: "A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

1. The evidence or material is subject to discovery or inspection under the rule, and
2. The other party previously requested, or the court ordered its production.

The Appeals Court claims that the petitioner is procedurally defaulted from the Brady claim by not raising this issue on direct appeal. The petitioner found that the prosecutor possessed this discovery almost one-and-a-half years after the Frank's Hearing. See McCleskey v. Zant, 499 U.S. 467, 113 L. Ed. 2d 517, 111 S. Ct. 1454(1991) 498-499.

By the time the petitioner learned of the prosecution's concealment of the Pennsylvania Investigation Reports, oral arguments for petitioner's direct appeal had already been held. See Appendix E.

The Appeals Court in their August 18, 2022 Opinion, Pg. 7, Par. 2, states: "Thomas admitted that he received the investigative reports while his appeal in this case was pending, and yet he failed to file them with his motion to vacate." The petitioner automatically assumed that, if the prosecution disclosed of the Pennsylvania Investigation Reports, then that would make them part of the record. To remedy this situation, the petitioner did file the portion of the reports that proves Detective Fields lied in his search warrant affidavit. It includes chronological phone calls recorded by the Pennsylvania investigators. This was filed to the Sixth Circuit Court of Appeals with petitioner's motion for rehearing.

REASONS FOR GRANTING THE PETITION (PAGE 5)

The Court of Appeals Erred Affirming the Denial of Petitioner's §2255

The Court of Appeals erred in the denial of petitioner's §2255 motion where District Court failed to conduct an evidentiary hearing to resolve the factual disputes.

Section 2255 provides that "unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall...grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." 28 U.S.C. §2255(2000). See e.g. *Fontaine v. United States*, 411 U.S. 213, 215(1973)(reversing summary dismissal and remanding for hearing because "motion and the files and records at the case [did not] conclusively show that the petitioner is entitled to no relief"); *Sanders v. United States*, 373 U.S. 1, 19-1 (1963).

In petitioner's §2255, petitioner alleged facts that, if proved, entitle the petitioner to relief. See *Hill v. Lockhart*, 474 U.S. 52, 60 (1985); and *Blackledge v. Allison*, 431 U.S. 63, 82-83(1977). Petitioner asserted that the prosecution violated *Maryland v. Brady*. Petitioner presented facts and timelines to prove that material evidence was not disclosed to the defense. Thus, petitioner was entitled to an evidentiary hearing.

See *U.S. v. Scott*, 625 F. 2d 623, 625(5th Cir 1980); *Pitts v. U.S.*, 763 F. 2d at 201; *U.S. v. Birdwell*, 887 F. 2d. 643, 645(5th Cir 1989)(evidentiary hearing warranted if petition contains "specific factual allegations not directly contradicted in the record").


CONCLUSION

Petitioner, JAMES D THOMAS, has been [de]prived of his ... basic fundamental rights, guaranteed under the provisions which are clearly outlined in the Fifth and Fourteenth Amendments to the United States Constitution and seeks [relief] through this Honorable Supreme Court, to restore those rights.

Based on the arguments, merits, claims and authorities, to which have been presented before this Honorable Supreme Court, Petitioner's rights to Due Process were violated.

It is Petitioner, JAMES D THOMAS' PRAYER, this Court [w]ill issue a Writ of Certiorari and reverse the judgment of the Sixth Circuit Court of Appeals.

Respectfully submitted on this 5th day of January 2023.

/s/ 
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PRO SE REPRESENTATION