No. 22-6759

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
JAN 23 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ex parte CHARLES JORDAN

To United States Supreme Court

PETITION FOR WRIT OF HABEAS CORPUS

Charles Jordan

P.O. Box 1057

Parchman, MS 38738

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QUESTION(S) PRESENTED

1. How can a petitioner raise fundamental claim to highest state court when he lost appeal of right on certain claims due to officials mishandling court order?

2.) Why should the State enjoy the privilege of asserting procedural default rule when it is their own misconduct that suppressed the constitutional errors in trial?

3.) How does counsel's silence concerning a due process violation that caused his client's line of defense to be abandoned represent his interests or subject the prosecution's case to a meaningful adversial testing?

4.) How does counsel being silent of a constitutional error he admits clearly transpired protecting his client's rights or representing his interests?

5.) In light of the constitutional errors and IAC, can it be confidentally said that a reasonable juror fairly considering all the evidence would have found me guilty?

6.) Should not a defendant have a right to Brady material prior to a post-trial plea, as they affected the consensual nature of the subsequent plea?

QUESTIONS PRESENTED

1.) Does the State's practice of circumventing MCA 99-17-1 conform to the fundamental principle of justice?

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I, Charles Jordan, inmate at Mississippi State Penitentiary, files this petition for Writ of Habeas Corpus on the ground that my imprisonment is in violation of the Fourteenth Amendment. On July 31, 2020, a guilty verdict was rendered against me on five counts of MCA 97-5-33. Using their sentencing powers and fruit of the poisonous tree, the State induced a plea to MCA 97-5-33(b), entered involuntarily on August 18, 2020, the day of sentencing. Newly discovered evidence that I was unable to obtain with due diligence revealed new claims and presents a factual predicate on other claims that have not been fairly considered. (Flangan v. Johnson, 154 F. 3d 196, 199 (5th Cir. 1998) Moreover, the failure to raise newly discovered claims was not due to an inexcusable neglect. (McLeskey v. Zant, 499 U.S. 478, 111 S. Ct. 1454 (1991)

I. REASON FOR NOT MAKING APPLICATION TO DISTRICT COURT

On September 27, 2022, in accordance with 28 U.S.C. § 2244 (b)(3)(a), I petitioned the United States Court of Appeals, Fifth Circuit for leave to file successive petition in District Court on claims that have not been considered and actual innocence exemption. On Nov.

2, 2022 the Court denied my motion claiming that I failed to make the required prima facie showing. As the Court failed to make accurate judgment in view of the law established by Sullivan v. Cuyler, Schlup, and Murray, I filed a motion for reconsideration. On November 15, 2022 the Court stated that reconsideration of the motion is not permitted. As such, I don't have the avenue to make application to the District Court.

II. EXHAUSTION OF STATE REMEDIES

1) On April 13, 2022; May 23, 2022; and June 1, 2022, I filed motions in the Oktibbeha County Circuit Court on newly discovered evidence and new claims. Without a full and fair hearing, the trial judge dismissed the motions and ruled the fundamental constitutional right claims as frivolous. The order was entered on June 20, 2022. How can I get fair review on these claims?

2) Although I informed the circuit court that I had been transferred from CMCF to MSP and even disclosed the mailing address, and all filings were mailed from me from March 8, 2022 through June 1, 2022, the court clerk mailed the June 20, 2022

to CMCF, P.O. Box 88550, Pearl, MS 39208 instead of the address I provided, MSP, P.O. 1057, Parchman, MS 38738. Due to the clerk and prison officials at CMCF mishandling the June 20, 2022 order, I lost my appeal of right on the motions, thereby violating the Fourteenth Amendment and my fundamental right to access the courts. (Johnson v. Avery, 393 U.S. 483, 485, 89 S. Ct. 747 (1969). MSP prison officials did not receive the June 20, 2022 order until on August 5, 2022, an entire 46 days later. Such external reasons caused me to not be able to appeal the June 20, 2022 order. (Coleman v. Thompson, 501 U.S. 722, 753, 111 S. Ct. 2456, 566 (1991)

3.) With no consideration of the fact I have been declared indigent and have been incarcerated since July 31, 2020, the trial judge denied my motion to proceed as a poop person on his April 18, 2022 and August 2, 2022 rulings, and stated I would be required to pay cost of appeal, solely because he was of opinion that my motions are barred. This is contrary to Rowland v. State, 42 So. 3d at 503-507 (Miss. 2010) that establishes that constitutional claims are excepted from the successive-writ bar, and Sanders v. State, 179 So. 3d 1190 (Miss. 2015) that establishes claims affecting fundamental constitutional

rights that have never been considered is not procedurally barred as a successive-writ. On November 3, 2022, despite me being indigent, the Court of Appeals dismissed my appeal for failure to pay cost of the appeal, which denied me adequate appellate review. (Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585 (1956); Ake v. Oklahoma, 470 U.S. 78, 105 S. Ct. 1087 (1985) As such, no full and fair hearing has been given.

III. Exceptional Circumstances

A full and fair hearing on certain claims has not been given. Although my affidavit asserted incidents that happened outside of court, affidavits to support my allegations were submitted from others, and there is well established case law that what was said during the plea colloquy regarding voluntariness is not binding (Sylvester v. State, 113 So. 3d at 621-22 (Miss. 2013); Baker v. State, 358 So. 2d 401, 403 (Miss. 1978), the trial judge denied my petition as facially without merit, although nothing in the record contradicts the allegations that would entitle me to relief.

Moreover, there are errors by the State and defense counsel that constitutes cause and prejudice.

There are also claims that are not procedurally defaulted, yet their is no longer any state remedy available. (Gray v. Netherland, 518 U.S. 152, 161, 116 S. Ct. 2074 (1996) The finding of no prima facie showing being met is erroneous and has denied me a full and fair hearing on a fundamental constitutional right. Their view of my motion did not yield to the importance of correcting a fundamentally unjust incarceration. (Engle, 456 U.S. at 135, 102 S. Ct. at 1576) The mishandling of the June 20, 2022 order and the dismissal of appeal due to me being unable to pay the cost are external and cannot fairly be attributed to me. (Coleman v. Thompson, 501 U.S. 722, 753, 111 S. Ct. 2456, 566 (1991)

This Court must adjudicate even succesive claims as the ends of justice require. I was not tried with the full panoply of protections that our Constitution affords the accused and the court cannot tangentially be satisfied that the constitutional error was harmless. The constitutional violations of the State and counsel has resulted in the conviction of an innocent man. (Murray v. Carrier, 477 U.S. 478, at 496, 106 S. Ct. 2639, at 2649-2650 (1986); Schlup v. Delo, 513 U.S. 298, at 324-38, 115 S. Ct. 851 (1995)

It is a paradigmatic abuse of discretion for the Fifth Circuit to deny me leave on an erroneous view of the law. (Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S. Ct. 2447, 2460-2461 (1990)

Counsel's ignorance or oversight was not any sound or deliberate tactic, and it was in clear dereliction of his duty to defend my case and represent my interests. Counsel's own admission to not disclosing the constitutional violation of perjury that he knew of shows that it was not for a strategic reason why he failed to disclose the Brady issue. The right to effective assistance of counsel was violated by this egregious and prejudicial act. (United States v. Cronic, 466 U.S. 648, 657, n. 20, 104 S. Ct. 2039, 2046. (1984) Somewhere in the history of justice, the importance of the Great Writ has been buried. It must be remembered that it is the fundamental instrument for safegaurding individual freedom against arbitrary and lawless state action. (Harris v. Nelson, 394 U.S. 286, 290-291, 89 S. Ct. 1082, 1086 (1969) Why should the State enjoy the privilege of asserting procedural default rule when it is there own misconduct that suppressed the constitutional error in trial?

The central mission of the Great Writ should be the substance

of "justice," not the form of procedures. (Brown v. Allen, 344 U.S. 443, 498, 73 S. Ct. 397, 441 (1953); Harris v. Nelson, 394 U.S. 286, 291, 89 S. Ct. 1082, 1086 (1969) The Court has an obligation of looking through procedural screens in order to prevent forfeiture of life or liberty in flagrant defiance of the Constitution. (United States v. Kennedy, 157 F. 2d 811, 813

Lastly, the State's misconduct and ineffectiveness of counsel has caused Jencks material (18 U.S.C. 3500) and other discovery requested persistently to not be delivered to me for examination and use. Counsel also chose through his own interest to be inert concerning the constitutional violation of perjury against my request and interest, disregarding the course of action he agreed to take. The cause of these actions and decisions are all external and directly contrary to my right to due process and the defense of my case. This satisfies both standards, Murray v. Carrier, 477 U.S. 478, 485, 106 S. Ct. 2639, 2644 (1986) and Reed v. Ross, 468 U.S. 1, at 14, 104 S. Ct. at 2909 as they arose from external sources and did not protect my constitutional rights nor promote my interests.

IV. CONFLICT OF INTERESTS

The claim has not been afforded a full and fair hearing.

As established by this Court in Kimmelman v. Morrison, 477 U.S. 365, 378, 106 S. Ct. 2574, 2584-85 (1986), I was unable to recognize counsels errors and evaluate Haug's performance until after trial, post-trial, and his May 23, 2022 response to my complaint. As the Eighth Circuit ruled in Jamison v. Lockhart, 975 F. 2d 1377 (1992), this Court cannot ignore the possibility that Haug's divided loyalties influenced his decisions that diverged with my interests.

During trial, on July 29, 2020, the alleged victim committed the constitutional and criminal violation of perjury, a due process violation Haug admits clearly transpired. (Exhibit 1) On the exact same day of the violation, Haug and I discussed the legal and material issue, disclosing the violation to the judge and jury was the course of action agreed to. Even upon arriving home from court that day, I emailed Haug at 5:17 pm and 5:23 with probative admissible evidence to use to disclose the violation during trial. (Exhibits 6 & 7)

Contrary to the agreed course of action, Haug was inert about the violation, even with knowing that the trial judge erroneously ruled the social media evidence from /julisa.spencer.5 inadmissible

on July 30, 2020 while was testifying solely because she falsely testified that the page belonged to a jealous ex of her baby's daddy. (Exhibits 4 & 9) His decision not to disclose the violation and request a mis-trial was in divergence of my request and interest, it also adversely affect His performance and my liberty, as my primary theory of defense was abandoned and he ceased to be my agent. (Coleman, 501 U.S. 722, 111 S. Ct. 2546, at 2567 (1991)

Even after trial, prior to sentencing, Haug agreed to represent my interest by disclosing my case to the AG to help me fight my conviction. (Exhibits 4) On September 17, 2020, Haug still assured he would represent my interest by refering my case to the AG. (Exhibit 8) After many attempts and reasonable efforts to obtain a sworn statement and get Haug to refer the case to the AG as he agreed, I filed a complaint with the Mississippi Bar on April 25, 2022. On May 23, 2022, Haug responded and (1) admitted that perjury was committed, (2) we discussed the course of action of disclosing the perjury, (3) without any consultation he decided not to complete agreed course of action, and (4) he feels unobligated to refer my case even though it was agreed to. (Exhibit 1)

This is clearly conflict of interests and according to S. Ct. precedent an actual conflict of interest. (Cuyler v. Sullivan, 446 U.S. at 356 n.3, 100 S. Ct. at 1722) How is counsel being silent of perjury protecting his client's rights or representing his interests? The very violation he admits to being silent about and feeling no obligation to disclose is the very violation that deprived me of a meaningful opportunity to present a complete defense and confront my accuser. (Crane v. Kentucky, 476 U.S. 683, 690 ; Pointer v. Texas, 380 U.S. 400)

How does counsel's silence concerning perjury that is a due process violation and caused his client's line of defense to be excluded from evidence subject the prosecution's case to meaningful adversial testing or fairly and adequately presents his defense? (Strickland v. Washington, 466 U.S. 668, at 687, 104 S. Ct. 2052; Betts, 316 U.S. 455, 476, 62 S. Ct. 1252, 1263) Counsel was silent about a constitutional violation that calls for a mis-trial against my interest. Failing to act on agreed course of action pertaining to the constitutional violation known to him, a guilty verdict was returned. I was immediately incarcerated after the guilty verdict on July 31, 2020. Counsel continued to assure he would disclose the violation.

(Exhibit 4) Counsel's pecuniary interests also led Haug to disclose to my wife and myself that partial payments were not good enough and he would need to be paid in full ~~to~~ order to even consider appealing my case. (Exhibit 4) Counsel also persuaded and coerced me into pleading by claiming he would refer my case to the AG for me to collaterally attack my conviction and by stating if I took the plea I would only serve 50% of my sentence, disregarding the fact that "as part of understanding the possible sentence faced by the defendant, he must be informed as to what portion of any anticipated sentence is mandatory, such that the prisoner would be ineligible for parole or other potential early release during the period." (Exhibit 4)(Washington v. State, 620 So. 2d 966, 970 (Miss. 1990)

Counsel even told my wife and I that he would email the state I needed to bring with me to Rankin that shows my charge is only 50%. (Exhibits 4&4A) Absent of these things and IAC, I would have been given a mis-trial and I also would not have pled guilty. All of the circumstances must be fairly considered. (Haynes v. Washington, 373 U.S. 503, 513, 83 S. Ct. 1336, 1343 (1963); Hopt. v. Utah, 110 U.S. 574, 4 S. Ct. 202)

After my conviction, while incarcerated in the County Jail on this sentence, I discovered on the news that Haug was also a justice court judge in Oktibbeha during trial. Witnesses against me and the trial judge himself were Haug's fellow city employees. Trial judge even referred to the ADA and Haug as his friends. (Exhibits 5 & 5A) It should also be noted that the ADA is now ironically in a run off for Circuit Court judge in Oktibbeha. The Court cannot ignore the influence Haug's position in Oktibbeha as a government actor had on his loyalty.

• He failed to oppose erroneous rulings made by trial judge that he admits to disagreeing with.

• He refused to disclose the constitutional and criminal violation of perjury that we agreed upon.

• He failed to object to prosecutor misconduct of arguing evidence that was excluded from trial. (U.S. v. Rusimel, 716 F. 2d 301 (CA 5 1983)

• He used the prejudicial word "victim" to refer to my accuser throughout the case and did not object to the ADA referring to her as "the victim," although the word arguably interferes with the guarantee of presumption of innocence. (Taconi v. State, 912

So. 2d 154, 156-157 (Miss. 2005)

• When counsel prejudicially vouched for the alleged victim, counsel was inert. She went as far as stating, "If the victim was lieing she would have come to us by now and said you know what I was young back then and I want to drop the charges." When she even stated that I used the privilege of being able to hear everyone testify to get up there and try to lie to make myself look good, he was inert. She made inappropriate comments about my private part and even called me a wolf on several occassions, yet counsel was silent. (Exhibit 4 & 9)

• Although the original indictment for MCA 97-5-33(6) was still active in Cause # 2018-0041-CRK, Haug's divided loyalty caused him to be silent and not oppose the State re-indicting me on MCA 97-5-33(6) and adding four counts of MCA 97-5-33(7) in Cause # 2020-0071-CRK an entire 762 days after original arraignment solely because I excercised my right to a jury trial. (Exhibit 10) Although I was arraigned on the same exact charge of MCA 97-5-33(6) in two active indictments and my 99-17-1 right was circumvented by the superceding indictment, counsel was silent.

• Counsel disregarded the established duty to investigate and to interview, as he failed to gather documents pertaining to the June 11, 2017 disturbance call, failed to impeach witness through her conviction of uttering forgery, failed to interview Kemetriyoni Spencer pertaining to the extortion scheme they used to disclose the alleged victim's real age, and he even failed to interview the alleged victim and the State's witnesses prior to the July 28, 2020 trial. (Rompila v. Beard, 545 U.S. 374, 162 L. Ed. 2d 360); Soffar v. Dretke, 368 F. 3d 441 (CA 5 2004)

• Counsel not being paid in full caused him not to make good on the agreed course of action pertaining to the violation of perjury. It also caused him to state he would not consider appealing my case without full payment. (Daniels v. U.S., 54 F. 3d 290 (CA 7 1995) Counsel's conflict of interest, ignorance, and oversight was clearly not any sound trial strategy nor did it tangentially represent my interest. No speculation has to be done, a course of action pertaining to a constitutional error was discussed and agreed upon, yet counsel failed to represent that interest and admits it was a choice of his, not consulted with me, nor any part of trial

strategy. The error was egregious and prejudicial; honestly, it is an inquiry into prejudice that cannot be justified. (Exhibits 1, 4, 6, 7, 8) (Cronic, 466 U.S. at 658, 104 S. Ct. at 2046); Strickland, 466 U.S. at 692, 104 S. Ct. 2052); Chapman v. California, 386 U.S. 18, 43, 87 S. Ct. 824, 837)

V. FAILURE TO INQUIRE

The claim was not tangentially ever raised in ~~initial~~ initial 2244 application, and it is a direct result and reflection of conflict of interest, a claim that did not begin to unfold until after my complaint and collateral review proceedings. (Kimmelman, 477 U.S. 365, 378, 106 S. Ct. 2574, 2584-85 (1986) The trial judge failed to inquire concerning a possible conflict known to him. He knew or should have known that Haug was a government actor in Oktibbeha, making them fellow city employees.

Knowing of this, trial judge ignored his independent constitutional duty to inquire according to the Sixth Amendment. (Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708 (1980); United States v. Wheat, 486 U.S. 153, 161, 108 S. Ct. 1692, 1698 (1988) Counsel and the judge failed to inform me of his position and my right to a non-conflicted

attorney. An inquiry was not initiated nor a waive of my right to a non-conflicted attorney obtained. (Holloway v. Arkansas, 435 U.S. at 488, 98 S. Ct. at 1180-81 (1978); United States v. Rodriquez, 506 U.S. 847, 113 S. Ct. 140 (1992) The failure to inquire resulted in an actual conflict of interest, as our interests diverged during his representation. (Cuyler v. Sullivan, 446 U.S. at 356 n. 3, 100 S. Ct. at 1722) (Exhibits 1, 4, 5, 6, 7, 8) Reversal is mandated.

VI. BRADY VIOLATION (ACTUAL INNOCENCE)

Counsel admits that 1) the asserted trial error occured and 2) he egregiously was silent concerning the constitutional and criminal violation. (Chapman, 386 U.S. 18, 43, 87 S. Ct. 824, 837 (1967) I was not afforded the full panoply of protections of the Constitution due to perjury, a due process violation that both the ADA and defense counsel knew of, but took no legal measure of correcting or disclosing it. A proper Schlup and Carrier standard of the claim must be fairly considered in light of all the circumstances.

The evidence and testimony I relied on to prove my innocence was excluded in violation of Chambers v. Mississippi, 410 U.S. at

295-97, 93 S. Ct. 1038), as the trial judge's only reason for excluding it was based solely on the perjury. (Exhibit 4 & 9)

Due to counsels silence concerning a due process violation that is fundamentally unfair, ~~the~~ the State disregarding legal obligation to disclose Brady material, and the trial judge interfering with counsels performance by excluding evidence pertaining to my primary line of defense, my case was not adequately presented. (Brady v. Betts, 316 U.S. 455, 476, 62 S. Ct. 1252, 1263) Numerous of documents from /julisa.spencer.5 have not been considered. the perjury has not been considered. the fact that she portrayed herself to be 19 on /julisa.spencer.5 and has changed her D.O.B. after my conviction has not been considered. (Exhibits 2,3,7) The fact that Haug did not put the case to a meaningful adversial testing has not been fairly considered. The fact that the alleged victim testified under oath to never disclosing she was only 16 has not been fairly considered.

(Schlup v. Delo, 513 U.S. 299, at 324, 115 S. Ct. 851 (1995)

Can the Court confidentally declare that in light of all the circumstances and excluded evidence and testimony a reasonable

juror who fairly considered all the evidence and testimony would have found me guilty? Especially considering age is an essential element of a child sex crime.

VII. TOLLED STATUTORY PROSECUTION AND VINDICTIVENESS SPEEDY TRIAL

762 days after my arraignment on MCA 97-5-33(6), the State circumvented my 99-17-1 right and apprehended me by re-indicting me and adding four charges because I would not plea and insisted on a jury trial. (Exhibit 10) This offends the principle of justice. (Cooper v. Oklahoma, 517 U.S. 348, 363-65, 116 S. Ct. 1373 (1996) All because I insisted on trial, I faced a superceding indictment while the original indictment was still active. (Blackledge v. Perry, 417 U.S. 21, 30 (1974); Goodwin, 457 U.S. 368, 372, 102 S. Ct. 2485) I went from facing 5-40 years to facing 25-200 years after I insisted on a jury trial.

Although additional charges doesn't reset clock and the speedy trial clock is not tolled unless the charge has been dismissed (United States v. Handa, 892 F. 3d 95, 106-07, MacDonald, 456 U.S. 1, 8, 102 S. Ct. 1497), the state circumvented 99-17-1 law and prosecuted me over 900 days after arraignment on MCA 97-5-33(6) The State also denied me a Speedy trial pursuant to Barker v. Wingo, 407 U.S. at 532-536, 92

S. Ct. 2182 (1972) The State has no justified reason for re-indicting me and adding charges after I invoked jury trial right. (Pearce, 395 U.S. at 726, 89 S. Ct. 2081) I was haled to Court on charges that denied me due process, charges that were used to induce a post-trial plea. Charges that were not for "societal interests." (Rinaldi v. U.S. 434 at 30, 98 S. Ct. at 85-86) The State was statutorily barred from trying me on MCA 97-5-33(6), I was denied due process by being apprehended by vindictiveness, and I was deprived of a speedy trial, being tried an entire 938 days after the original January 5, 2018 indictment.

VIII. INVALID PLEA

The impact of the conflict of interests on Haug's course of action in the post-trial plea is virtually impossible to assess. (Holloway v. Arkansas, 435 U.S. 475, at 490-491, 98 S. Ct. 1173, at 1182 (1978) As described in this motion on pages **7 - 15** all the circumstances and my imprisonment must be considered in examining the plea. (Haynes, 373 U.S. 503, 573, 83 S. Ct. 1336, 1343) As the plea was improperly influenced by counsel's agreed course of actions, it is invalid. (Shelton, 246 F. 2d 571, 571 n. 2; Bram, 168 U.S. 532, at 543-543, 18 S. Ct. 187) Premises considered, I respectfully move for habeas corpus.

Charles Jordan