Supreme Court of The United States

No: _____

Willie J. Thomas vs. State of Florida
Petitioner Respondent

Comprehensive Appendix in Support of All Writ

XI.

APPENDIX A

OPINION of the UNITED States Court of Appeals 11th CIRCUIT

Order denying
10-19-22

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-11790

WILLIE THOMAS,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:18-cv-62348-PCH

JUDGMENT

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 20-11790

WILLIE THOMAS,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:18-cv-62348-PCH

The district court found the necessary facts and made entirely reasonable credibility determinations to support its conclusion that another amendment would be futile. Our review is limited to clear error, and "review for clear error is deferential," *United States v. Robertson*, 493 F.3d 1322, 1330 (11th Cir. 2007). "[W]e will not disturb a district court's findings unless we are left with a definite and firm conviction that a mistake has been committed." *United States v. Ghertler*, 605 F.3d 1256, 1267 (11th Cir. 2010) (quotation marks omitted); *accord, e.g.*, *United States v. Monzo*, 852 F.3d 1343, 1345 (11th Cir. 2017). There is no error, much less clear error, in the district court's findings.

The district court's judgment denying the petitioner leave to amend his 28 U.S.C. § 2254 petition is **AFFIRMED.**

Appendix B

OPINION of the Southern District Court of Florida

Appendix C

Opinions of State Courts of Florida

[redacted]

WILLIE JAMES THOMAS, Petitioner(s) vs. STATE OF FLORIDA, Respondent(s)
SUPREME COURT OF FLORIDA
139 So. 3d 889; 2014 Fla. LEXIS 1143
CASE NO.: SC13-1299.nb
April 3, 2014, Decided
Notice:

DECISION WITHOUT PUBLISHED OPINION

Editorial Information: Prior History

Lower Tribunal No(s).: 4D11-4265; 09023237CF10A.Thomas v. State, 125 So. 3d 928, 2013 Fla. App. LEXIS 7863 (Fla. Dist. Ct. App. 4th Dist., May 15, 2013)

Judges: POLSTON, C.J., and QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

Opinion

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

[redacted]

POLSTON, C.J., and QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

[redacted]

WILLIE JAMES THOMAS, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT
125 So. 3d 928; 2013 Fla. App. LEXIS 7863; 38 Fla. L. Weekly D 1069
No. 4D11-4265
May 15, 2013, Decided
Editorial Information: Subsequent History

Review denied by Thomas v. State, 139 So. 3d 889, 2014 Fla. LEXIS 1143 (Fla., Apr. 3, 2014)US Supreme Court certiorari denied by Thomas v. Florida, 574 U.S. 918, 135 S. Ct. 309, 190 L. Ed. 2d 224, 2014 U.S. LEXIS 5587 (Oct. 6, 2014)Magistrate's recommendation at, Habeas corpus proceeding at Thomas v. Inch, 2020 U.S. Dist. LEXIS 44415 (S.D. Fla., Mar. 11, 2020)

Editorial Information: Prior History

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona M. Holmes, Judge; L.T. Case No. 09-23237CF10A.

Counsel for Carey Haughwout, Public Defender, and Ellen Griffin, Assistant Public Defender, West Palm Beach, appellant.
Pamela Jo Bondi, Attorney General, Tallahassee, and George Francis, Assistant Attorney General, West Palm Beach, for appellee.

Judges: DAMOORGIAN, J. STEVENSON and CONNER, JJ., concur.

Opinion

Opinion by: DAMOORGIAN

Opinion

{125 So. 3d 929} Damoorgian, J.

Willie Thomas appeals his final judgment and sentence adjudicating him guilty of armed burglary of a dwelling, aggravated battery with a deadly weapon, and possession of cocaine. Thomas argues that we should reverse his conviction and sentence because the trial court abandoned its neutral role during the trial, including giving him incorrect legal advice, and incorrectly applied the excited utterance exception to the hearsay rule. We affirm on all grounds and write only to address the application of excited utterance exception to one of the trial court's evidentiary rulings.

The testimony at issue is an eyewitness's description of an altercation between Thomas and the victim, during which the victim yelled out "he has a knife, he has a knife." The trial court allowed the eyewitness to testify regarding what

she heard the victim say. Thomas asserts that the trial court erroneously admitted this testimony as an excited utterance.

An appellate court reviews evidentiary rulings for abuse of discretion, though the rules of evidence limit this discretion. *Padgett v. State*, 73 So. 3d 902, 904 (Fla. 4th DCA2011). A trial court's determination regarding whether testimony is hearsay is reviewed *de novo. Id.*

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." 90.801(1)(c), Fla. Stat. (2008). Hearsay is inadmissible unless it falls within an exception. 90.802-.803, Fla. Stat. (2008). An excited utterance, or "[a] statement . . . relating to a startling event or condition made while the declarant [is] under the stress of excitement caused by the event or condition," is a hearsay exception. 90.803(2), Fla. Stat. (2008). Courts have interpreted the statute as requiring three elements for an excited utterance to be admissible: "(1) there must have been an event startling enough to cause nervous excitement; (2) the statement must have been made before there was time to contrive or misrepresent; and (3) the statement must have been made while the person was under the stress of excitement caused by the startling event." *Mariano v. State*, 933 So. 2d 111, 115 (Fla. 4th DCA{125 So. 3d 930} 2006) (quoting *Stoll v. State*, 762 So. 2d 870, 873 (Fla. 2000)).

The party seeking to qualify a statement as an excited utterance must lay a proper foundation for its admission. *Mariano*, 933 So. 2d at 115. Here, the witness testified that she heard a loud noise coming from the patio late at night. She rushed outside to find a stranger fighting with the victim and she joined the struggle. During the altercation, the victim exclaimed, "He has a knife, he has a knife." This testimony establishes that all three requirements were met, since a home invasion constitutes a startling event, the statement was made at the time the struggle was in progress, and the person who made the statement was being attacked by a stranger holding a knife. On the testimony presented by the eyewitness, the trial court correctly ruled that the excited utterance exception applied to the eyewitness's statement.

Affirmed.

Stevenson and Conner, JJ., concur.

Appendix D

All State Cases Related to Petitioner's Case

1. Thomas v. State 125 So. 3d 928 (Fla. 4th DCA 2013)
2. Thomas v. State 139 So. 3d 884 (Fla. 2013)
3. Thomas v. Sec'y Dept Corr. 2018 U.S. App. LEXIS 2125 (2018)
4. Garcia v State 21 So 3d 30,35 (Fla. 3d Dist 2009)
5. Wilcox v. State 143 So 3d 359, 373 (Fla. 2014)
6. Schofeld v. State 67 So 3d 1066, 1071 (Fla. 2d Dist 2011)

circled numbers cited on Pg # 4

Appendix E

All Federal cases Related to Petitioner's case

1. Dussouy v. Gulf Coast Investment Corp, 660 F. 2d 594 (5th Cir 1981)
2. Farris v. United States, 333 F. 3d 1211, 1215 (11th Cir 2003)
3. Forman v. Davis, 371 U.S. 178, 9 - 83 S. Ct. 227
4. Spanish Board, Sys of Fla. Inc. v. Clear Channel Comm'ns. Inc. 376 F. 3d 1065, 1077 (11th Cir 2004)
5. Strickland v. Washington 466 U.S. 668, 80 - 104 S. Ct. 2052 (1984)
6. Negron v. City of Miami Beach, 113 F. 3d 1563, 1570 (11th Cir 1997)
7. Bryant v. Dupree, 252 F. 3d 1161, 1163 (11th Cir 2001)
8. Hawk v. Olson, 326 U.S. 271, 279 (1945)
9. Tyler v. Beto, 391 F. 2d 993, 995 (5th Cir 1968)
10. Advanced Futility Argument, 936 F. 3d 1184
11. Rock v. Arkansas, 483 U.S. 44, 51 - 53 (1987)
12. United States v. Teague, 953 F. 2d 1525, 1532 (11th Cir 1992)
13. United States v. Ly, 646 F. 3d 1307, 1313 (11th Cir 2011)
14. Blackburn v. Foltz, 828 F. 2d 1177, 1182 (6th Cir 1987)
15. United States v. Poe, 352 F. 2d 639, 640-41 (D.C. Cir 1965)

Circled Numbers cited on Pg * 4

Numbers underlined cited on Pg * 1

APPENDIX - F

STATUES AND RULES RELATED TO PETITIONER'S CASE

cited on PG # 4

FLA. Stat. 90.610 (2009)

FLA. EVID. 610.6

FLA. Std. JURY INST. (CRIM) 3.9 (1981)

28 U.S.C. § 1257

AID OF THE COURT'S APPELLATE JURISDICTION

Constitutional privilege, were Constitutional Rights are violated there is not higher duty to maintain it unimpaired and unsuspended. A conviction procured in violation of a Constitution Right, a right that cannot be waived unknowingly and involuntary must be vindicated because due process of the law is part of these United States Constitution.

The weight to be given a particular State Court adjudication of a Federal claim later pressed on Habeas Corpus in a Federal District Court is substantially in the discretion of the Federal Courts, however Amend VI. of these United States Constitution calls for effective Assistance of Counsel of which petitioner did not receive and the State Court's adjudication is flawed because the Trial Court nor the District Court of Appeals never addressed Petitioner's Federal Constitution claims. Neither of these two State Courts' gave and opinion or a rationale in their denial. Although United States Supreme Court case law says these Court's must do so.

The Writ of Habeas Corpus is Civil Remedy for the enforcement of the right to personal liberty. While a State Criminal judgment resting on a constitutional error such as a (loss of right to testify) cannot be permitted to defeat the Federal Habeas Corpus policy that Federal Constitutional Rights of Personal Liberty shall not be denied without the fullest opportunity for plenary Federal Judicial Review. Federal Court jurisdiction in Habeas Corpus Proceedings is conferred by the allegation of an unconstitutional restraint and is not defeated by anything that may occur in the State Court proceedings.

The scope of Due Process of law comprehends not only an accused right to be heard but also a number of explicit Procedural Rights drawn from the Bill of Rights. Here all other Courts have failed Petitioner. No State shall deprive any person of Life, Liberty or Property, without Due Process of the Law. Nor deny to any person within it's jurisdiction the equal protection of the law's and these United States Constitution.

ABUSE OF DISCRETION BY JUDGE

From day one of Petitioner's filing of his Habeas Corpus Petition the Southern District Court of Florida showed bias toward the petitioner. The record will show this Court struck Petitioner's Petition twice and refused to allow Petitioner leave to Amend when Petitioner informed the Court that while attempting to comply to the Court's 20 page Local Rule his only exhausted claim of ineffective Assistance of Trial counsel and loss of his right to testify was inadvertently cut out by mistake. District Court Judge denied leave to Amend without any consideration of Court Rules and one year later moves to close the case on Procedural bar. Petitioner filed a 2253 of which the 11th Circuit Court of Appeals granted, Appointed Counsel, Granted brief filed by Appointed Counsel. Now Southern District Court after petitioner files his appeal, now this Court wants to talk futility. When Petitioner asked for leave to Amend Petitioner was denied. Is there a double standard, this clearly shown abuse of discretion and a disregard for the Rules of the Court by this Southern District Court Judge, same judge to deny Petitioner on limited remand from the 11th Circuit Court of Appeal.

Usurpation of Judicial Power

This Southern District Court judge was very clear as to denying my Petition and closing my case, was not shy in being outright bias toward Petitioner with a total disregard of the law or the Constitution, not to mention the Rules and law governing the District Court. On Remand from the 11th Circuit Court of Appeals this judge refused to acknowledge what those judges said in their remand order. They stated the parties agree the Trial judge in this case made a misstatement of the law to the Petitioner. We want to know what Petitioner was thinking at the time. Yet when Petitioner testified under oath this judge showed his anger by shouting to the Attorney General that they need to get the Trial Attorney in the Court Room and went on to say that he was stopping this hearing to give the Attorney General time to do so, the judge set the hearing off for two weeks. Petitioner was brought back after two weeks. Yet no Trial Attorney was

produced by the Attorney General who attacked Petitioner on cross. District Court judge showed just how angry he was about Petitioner's unrefuted testimony by lashing out at Petitioner say on the record during the hearing that if he had II prior felonies he would not have wanted to testify. Did this judge show that he was bias toward Petitioner for any reason that the Court was made aware of? Because of this Judge's conduct on the face of the Court record it has to be very clear that petitioner did not have a fair hearing before this District Court Judge.

ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT

Petitioner has followed the Rules of Court, has been through both Post-Conviction, appealed to the District Court of Appeals in Florida State Court System presenting these Courts the opportunity to address petitioner's Federal Claims. These are Constitutional violations that these Court's have failed to resolve. Not one of these two Courts gave an opinion or a rationale in their denials and they should be held accountable for their inactions. Here petitioner clearly loss his right to testify due to ineffective counsel at trial. Misadvice as to how his prior convictions would be used by the State if Petitioner choose to testify. Not only did trial counsel misadvise the Petitioner but the trial judge also misadvised the Petitioner and petitioner was never given the correct advice as to how his prior convictions would be used against him even though trial counsel heard what the trial judge told petitioner he would have to say if petitioner so choose to testify and trial counsel never objected. Upon filing his Habeas Corpus petitioner's petition was struck not once but twice because petitioner did not know of the Southern District Court's Local Rule 20 page limit. Petitioner filed his petition in compliance but did not know that he inadvertently cut out his only exhausted claim. Once Petitioner noticed the mistake he file a motion to the Court asking Leave to Amend to include his only exhausted claim. The Court denied Petitioner leave to Amend and Petitioner filed a 2253 to the 11th Circuit of which they Granted and appointed a counsel who filed the

appeal and he 11th Circuit Granted. Now the Southern District wants to talk about futility, the 11th Circuit does a limited remand directed back to the Southern District Court to entertain futility, while on remand the Judge totally intimidated counsel for the Petitioner and went on to use intimidation on the petitioner during petitioner's attempt to testify as to what happened during and before his trial. All of which is on the Court's Record of petitioner's hearing. The disrespect and intimidation by this judge show his disregard for the law and his bias toward the petitioner. The 11th Circuit after reviewing hearing recordings or the transcript had to acknowledge the bias and outbursts along with the intimidation put on by this judge, yet the 11th Circuit did not sanction this judge for his conduct and actions during this hearing and the 11th Circuit Court of Appeals excepted this judge's denial. The 11th Circuit Court has remanded cases such as mine. Cases that have my exact issues and facts, yet here this Court declined to grant relief, knowing all to well how wrong the decisions have been ruled in my case. Petitioner has been left no choice but to look to this Untied States Supreme Court to seek the justice only this Court can grant upon review of Petitioner's petition. Petitioner trusts that the Supreme Court will take a good hard look at this case and the facts of which require relief in the form of a remand back to the Trial Court so that due process of the law, equal protection under the law, effective assistance of counsel, the right to testify, all of which are covered under the United States Constitution, and not based on a judge's opinion or his bias toward any Petitioner in this United States.