No. 23 - 5157

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

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IN RE: TRACY WHITAKER,

PETITIONER

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ON PETITIONER FOR AN EXTRAORDINARY WRIT
TO THE THIRD CIRCUIT COURT OF APPEALS

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PETITION FOR A WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2254

* * * * * * *

TRACY WHITAKER
INMATE No. CP-9712
SCI COAL TOWNSHIP
1 KELLEY DRIVE
COAL TOWNSHIP, PA 17866

PRS SE PETITIONER

QUESTIONS PRESENTED

Mr. Whitaker alleges the County of Dealware, Pennsylvania, District Attorney's Office violated the Fourteenth Amendment's Due Process Clause to the United States Constitution, when the county assumed prosecutorial authority that was never ordained by the people of Pennsylvania from its inception. Thereby, Mr. Whitaker was convicted in large part of a process and procedures that derived from a unconstitutional foundation laws. The omitted information also derives from the certified or public records. In finding no miscarriage of justice or statutory requirements in the presentment of a Prima Facie Showing, the Third Circuit Court of Appeals significantly erred in denying Mr. Whitaker's authorization to file a second habeas corpus.

Did the Third Circuit Court of Appeals erred in declining to grant Mr. Whitaker authorization to file a second habeas corpus petition when his incarceration stems from a violation of his constitutional rights, specifically when the District Attorney's Office of Delaware County deprived him of his liberty without due process of law, pursuant to laws that's un-ratified and void from its inception, which created a miscarriage of justice exception in this matter with exceptional circumstances?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover. A list of parties to the proceedings in the Court whose judgment is the subject of this petition is as follows:

1. The District Attorney Office of Delaware County, Pennsylvania 19063.

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PETITION FOR EXTRAORDINARY RELIEF

The Petitioner, Tracy Whitaker, respectfully prays that a Writ of Extraordinary Relief will be issued to review the judgment and opinion of the Third Circuit Court of Appeals, rendered in these proceedings on January 23, 2023.

OPINION BELOW

The Third Circuit Court of Appeals denied Petitioner's application for leave to file a second habeas corpus petition pursuant to 28 U.S.C. § 2244(b) in its Cause No. 22-3411. The order is attached in appendix to this petition at page 1a.

JURISDICTION

The original order of the Third Circuit Court of Appeals was entered on January 23, 2023.

The jurisdiction of this court is invoked under Article III, § 2, and 28 U.S.C. § 1651, 28 U.S.C. § 2254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provision are involved in this case.

U.S. CONST. AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States 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.

28 U.S.C. § 2244

(a). No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a section or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

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

(ii) the facts 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 constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determine that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later then 30 days the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall no be the subject of a a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State Court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceedings, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence,

(d)(1) a 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody, pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or tne expiration of the time for seeking such review;

(B) tne date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) tne date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable cases on collateral review; or

(D) the date on which the factual predicate of tne claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

PENNSYLVANIA 1776 STATE CONSTITUTION

Pennsylvania's 1776 Constitution, Preamble Clause (1) and Section 47, is located at appendix 2a.

STATEMENT OF THE CASE

Mr. Whitaker was convicted on December 8, 1994 by jury trial in Court of Common Pleas of Delaware County, Pennsylvania of first degree murder, aggravated assault, and endangering the welfare of children. Trial Judge Harry J. Bradley imposed a term life imprisonment and 1 to 2 years concurrently. His conviction was affirmed on direct appeal. Commonwealth V. Tracey Whitaker, 668 A.2d 1199 (Pa.Super. 1995). Pennsylvania Supreme Court denied Mr. Whitaker's petition for allowance of appeal. Commonwealth V. Tracey Whitaker 672 A.2d 307 (Pa. 1996). Mr. then sought out a federal writ of habeas corpus under 28 U.S.C. § 2254 which was dismissed as untimely. U.S.D.C. E.D. Pa. Dkt. No. 99-4578. Mr. Whitaker's filed numerous state post conviction relief acts (PCRA) which were dismissed. A Pennsylvania Great writ of habeas corpus was filed to Pennsylvania Supreme court and was denied, but leave to file in the original process was granted on November 3, 2020. (Pa. Supreme Ct. Dkt No. 139 MM 2020). Mr. Whitaker then filed a Rule 60(b) Motion which was denied for failure to seek authorization from the Third Circuit Court of appeals. The District Court's Clerks Office deferred said order and memorandum to Mr. Whitaker until August 2, 2022. Authorization was sought to file a second or successive habeas corpus petition by Mr. Whitaker from the Third Circuit Court of Appeals for which the court denied relief.

At Mr. Whitaker's trial, the District Attorney's Office proceeded on the theory that Mr. Whitaker was responsible for the death of Robert Pringle, Jr., in absence of first degree murder charges according to the prescribed statute of Pennsylvania's Crime Code. The Assistance District Attorney Robert J. Rossi was permitted to present circumstance evidence as result of Mr. Whitaker being alleged to have inflicted blunt force injuries to the head and spine of the victim during a 6 to 12, or 9 to 15 hours before the child's body was discovered in the morning by his mother Delise Mumford on May 18, 1994. Ms. Mumford lived

with her boyfriend Tracey Whitaker at 2800 West Thirteenth Street, Chester, Pennsylvania, along with her 2-year old daughter, and her 9-month old son Robert Pringle, Jr., and Dawanda Williams and her four children.

Early after of May 17, 1994, Delise Mumford left her son Robert Pringle, Jr. in the care of Mr. Whitaker from approximately 2:00pm while she visit with a friend. When questioned by prosecutor at trial, Ms. Mumford testified she call Mr. Whitaker several times during the day to ask how her son was doing. Ms. Mumford stated that at no time Mr. Whitaker indicated that her son was injured, had fallen, or had something wrong with him. Later, that night when Ms. Mumford returned home, she checked on her son who was laying on his stomach in the crib and appeared to be sleeping. Ms. Mumford stated to investigators initially, after arriving home that evening, she gave her son a bottle and put him to bed and that he was responsive with no problems of any type. Then claimed he drank half the bottle she gave him. Then changed her statement at trial claiming she lied about such comments.

Dawanda Williams testified for the prosecution that when she returned home that night of May 17, 1994, Ms. Mumford retreated upstairs for the night alone with her son Robert Pringle, Jr. for half hour before Mr. Whitaker decided to join them.

On May 18, 1994, the baby fail to wake up at 8:00am as was his habit. Ms. Mumford and Mr. Whitaker checked on the baby and found his body cold and hard and in the same position he was alleged to have been in the night before.

After going to the hospital and learning that her son was dead, both Ms. Mumford and Mr. Whitaker voluntarily went to the police station to answer questions. Three-recorded statement was provided by Mr. Whitaker as he claims at 2:00pm on May 17, 1994, he put the child in his crib for a nap and gave him a bottle. Later in the day, he brought the child downstairs for dinner. After

dinner which was approximately 7:00pm, he put the baby to bed. Delise Mumford returned several hours later. They both checked on the baby and he felt cold as Mr. Whitaker closed the window.

The second tape recorded statement occurred after a short break following the first tape interview with police. Mr. Whitaker told police that he had placed the child on the radiator cover by the window and the baby fell onto the floor. After being advised of his Miranda warning, Mr. Whitaker proceeded to described his second tape-recorded interview of how he had left the child unattended briefly when the baby fell. He described the child having difficulty holding his head up after the fall. When police heard Mr. Whitaker's explanation for how the injuries occurred, the Medical Examiner's Office was contacted, and advised the police that Mr. Whitaker's explanation was not consistent with the severity of the type injuries to the child.

After the second tape-recorded statement, Mr. Whitaker asked to speak to police a third time as was again, he was advised of his Miranda warning before making yet a third taped statement. In this third interview to police, Mr. Whitaker told police that in addition to the baby falling, he had also struck his head when Mr. Whitaker was playing with him. Mr. Whitaker described tossing the baby up in the air and how the baby fell to the floor when he failed to catch him.

The autopsy revealed that the death was cause by subdural hemorrhage due to the blunt trauma. The manner of death was declared a homicide. The Medical Examiner described the injuries to Robert Pringle, Jr. as including a facial abrasion near the child's lip; bruising on the cheek and jaw; a broken femur with a spinal fracture; scalp wounds which indicates multiple blunt blows to the head; a fractured rib; spinal cord damage which extended from the neck to the chest; bruising and hemorrhaging. The injuries were all recent injuries.

The Medical Examiner further testified to a reasonable degree of scientific certainty that the fatal injuries were inflicted between 6 to 12 hours, or as high as 9 to 15 hours prior to death, although it could have been a extra hour either side. Additionally, death occurred at 3:00am or 4:00am on May 18, 1994. The Medical Examiner then admits during his testimony, that there is no exact time of death or injuries, considering there just approximations that's not supported by the submission of coroner's written report.

Dr. Cindy Christian, Pediatrician and Medical Director of the Child Abuse Program, testified that she only reviewed the medical records involving the death of victim. Dr. Christian further testified to a reasonable degree of medical certainty that the fatal injuries were caused by a severe beating; that this was a healthy baby who was either abused, shaken, twisted, thrown against something or struck with something. It was not a natural death but rather a traumatic death caused by another person.

Prior to trial, Judge Harry Bradley presided over the evidentiary hearing regarding the admissibility of photographs of the victim taken during the autopsy. The court issued an order regarding the challenged photographs in which he determined that the evidentiary value of the photos outweighed any potential of them inflaming the passion of the jury.

During the same pretrial eveidentiary hearing, defense counsel requested more specific information from the Commonwealth in connection with its Bill of Particulars. Specifically, defense counsel wanted information regarding the time of death of the victim and when the fatal injuries were inflicted. The trial court directed the Commonwealth to provide defense counsel with whatever more specific information it obtained regarding when the injuries and death of the victim occurred. The Commonwealth provided no evidentiary report that it complied with that directive, stating it orally provided defense counsel with the

requested information well in advance of trial.

During trial, defense counsel claimed that the information had not been provided by the prosecutor. The court indicated that it believed that the prosecutor orally provided the requested information, however, defense counsel somehow did not hear it. The court permitted the Medical Examiner to testify that the injuries causing death were likely inflicted between 6 to 12 hours or as high as 9 to 15 hours before death was discovered. Defense counsel's motion for a mistrial was denied. Although defense counsel claimed Mr. Whitaker would be prejudiced by the testimony of the Medical Examiner, the trial court concluded otherwise.

During the Rule 60(b) Motion proceedings, in response to the issues, the District Attorney's Office maintains for the sake of argument, the lack of a ratified consensus to the 1776 State Constitution, did not produce any fraudulent results by the prosecution. And whatever fraud was committed was done by the framer of the 1776 Constitution, and Mr. Whitaker failed to show how the 1968 Amended State Constitution which was in operation at the time of his trial, was unconstitutional. Therefore, the State believes no fraud was committed in a adversarial manner, because Mr. Whitaker attacked his conviction under State law rather than federal court procedures, and shall deny his Rule 60(b) Motion accordingly. The District Court denied Mr. Whitaker's Rule 60(b) Motion because it did not fall within any exception to the second or successive bar of 28 U.S.C. § 2244(b)(2).

In seeking authorization to file a second habeas corpus, the Third Circuit Court of Appeals determined Mr. Whitaker failed to show a Prima Facie Showing pursuant to 28 U.S.C. § 2244(b)(2)(B). The Court of Appeals conclusion is wrong whereas Mr. Whitaker established the required prima facie showing to file a second or successive bar.

REASONS FOR GRANTING THE WRIT

I. THE THIRD CIRCUIT COURT WRONGLY CONCLUDED MR. WHITAKER FAILED TO SHOW A PRIMA FACIE SHOWING THAT MEETS THE CRITERIA OF 28 U.S.C. § 2244(b)(2).

The Third Circuit conclusion that Mr. Whitaker did not meet the statutory requirement of 28 U.S.C. § 2244(b)(2). The Court decided Mr. Whitaker failed to make a prima facie showing that his claim relied on new constitutional law made retroactive for collateral review, or newly discoverable evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found him guilty of the underlying offense[s]. The court's decision was wrongly decided whereas Mr. Whitaker provided the court with new evidence and provided the court with information that would have convinced a reasonable factfinder not to find Mr. Whitaker guilty, specially when the foundation of Pennsylvania's constitutional authority and laws has yet to be ratified by its citizens in 1776, leaving the State's 1968 Constitutional Amendment to become fruit of a poisonous tree. Evidence introduced at trial would certainly have been deemed inadmissible in its presentment of criminal charges. With exceptional circumstances, a miscarriage of justice has ensued.

This Court described § 2244(b)(2), and as mandated by Congress, when a claim not presented earlier may be considered: "intervening and retroactive case law," or new discovered facts suggesting "that ... no reasonable factfinder would have found the applicant guilty of the underlying offense." Magwood V. Patterson, 177 L.Ed.2d 592, 604, (2010). Under this test, the Court of Appeals ignored the severity of Mr. Whitaker's new claim, and whether any reasonable factfinder would have found him guilty. The Court simply came to the wrong conclusion in this matter. It is clear the court disregarded this principle by holding, there was a

failure to make a prima facie snowing of § 2244(b)(2), App. 1a.

Mr. Whitaker proffered documentation form government agencies that verified flagrant violations of his constitutional rights in a sense of depriving him of his fundamental rights in opposite to the United States Constitution, and his liberty in violation of the 14th Amendment's Due Process Clause, by an unconstitutional State authority that trickled down through the State's 1968 Constitutional Amendments. App. 2a & 3a. Since Pennsylvania's first 1776 Constitution laid the foundation of laws in the State, it has been void on its face for failing to be founded on the authority of the people, as mandated by the 1776 Preamble Clause (1). App. 2a. Through the years, the State Constitution was amended in 1968, deriving its authority pursuant to 1776 Preamble Clause (1) and Section 47, App. 2a. As a result, the 1776 State Constitution handed down hypothetical authority that lead to the arbitrary, disadvantage, and unfair procedures against Mr. Whitaker's liberty interest. Daniel V. Williams, 474 U.S. 327, 331 (1986); Hurtado V. California, 110 U.S. 516, 535 (1884).

The foundation of Pennsylvania laws and authority were never ratified in 1776 and 1790, App. 3a. The State has performed a host prosecutorial functions that is repugnant to the 14th Amendment's Due Process Clause, and the deprivation of fundamental rights, constitutionally due to Mr. Whitaker. The prohibition of the 14th Amendment is clear on its face, and restrict the State from performing in any arbitrary manner which would deprive any citizen of his liberty by unauthorized authority. Mackey V. United States, 401 U.S. 667, 689 (1971).

In light of this information, the factual issues does not require the attention of this court. For example, if a statute prescribes no comprehensible course of conduct, then a statute may not constitutionally be applied to a set of facts. The same applies to Pennsylvania's Constitution in retrospect to its operational authority. United States V. Powell, 423 U.S. 87, 92 (1975). What does

merit review is the emerging practice of the Third Circuit Court of Appeals and the District Court discretionary review of ignoring the overall issues of a continuous miscarriage of justice in progress. But more importantly, the Third Circuit disregarded the fact that Pennsylvania's electoral votes could not have been discovered through due diligence because of its concealment from the Petitioner, thereby giving rise to this issue that was created by the State of Pennsylvania's blatant practice of depriving fundamental rights through an unauthorized procedures that has been unconstitutionally established and void on its face from its inception.

This court discretionary review is warranted where exceptional circumstances exist, and the rudimentary demands of fair procedures are inconsistent with the 14th Amendment Notice Requirement and Due Process Clause. Hill V. U.S., 368 U.S. 424, 428; Bousley V. U.S., 523 U.S. 614, 626 (1998).

Because the Third Circuit Court of Appeals ignored the seriousness of Mr. Whitaker's prima facie showing, and the District Court's conclusion was inaccurate, App. 4a, this effectively restricted Mr. Whitaker from obtaining any relief in any federal court. This Court should grant Mr. Whitaker's Petition for Extraordinary Writ in aid of this Court Article III, § 2, Appellate Jurisdiction.

CONCLUSION

For these reasons, a writ of Extraordinary Relief in aid of a writ of habeas corpus should be issued to review the judgment of the Third Circuit Court of Appeals.

Respectfully submitted,

Tracy Whitaker
Inmate No. Cp-9712
SCI Coal Township
1 Kelley Drive
Coal Township, PA 17866
Pro Se Petitioner

14th day of June, 2023