

No. _____

23-609 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

NOV 17 2023

OFFICE OF THE CLERK

Dena Inez Minton — PETITIONER
(Your Name)

vs.

Miranda Richardson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dena Inez Minton
(Your Name)

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(Address)

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(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

Petitioner has shown the courts a plethora of new evidence to support numerous violations of petitioners Constitutional Rights, that meet the qualifications pursuant to 28 U.S.C.A. § 2254 (a) and 28 U.S.C.A. § 2254 (2) (B). Therefore, why is the petitioner being denied relief, when there has been a significant infringement of petitioners Constitutional Rights?

In addition, the petitioner was denied a certificate of appealability and the appeal was dismissed, by the U.S. Magistrate Judge. The Magistrate Judge claims petitioner failed to file the document, "Objection To The Magistrate Judge Recommendation," in a timely manner and states the petitioner mailed the, Objection Document to the wrong address. However, the petitioner followed mailing instructions that were sent to petitioner by The North Carolina Prisoner Legal Services, and did

meet the deadline of 8/1/23. (Document and certified mailing receipt included). Therefore, why is the petitioner being held at fault when The North Carolina Prisoner Legal Services, are sending offenders erroneous Habeas Corpus documents to file to the courts?

Also the courts argue that the petition was filed outside the one-year limitation period according to AEDPA. However, the exception is 28 U.S.C.A. § 2254 (a) as well as Federal Rule of Civil Procedure 59 (e), that states motions may only be granted in three situations: (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Why is the court system refusing to obey the law of the land and continue to deny petitioner relief for this obvious miscarriage of justice?

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:

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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 judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D 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 C 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 A 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 State of North Carolina Superior 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 31, 2023.

☒ 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 August 2021.
A copy of that decision appears at Appendix A.

☐ 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

28 U.S.C.A. 2254 (a) states, The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to judgment of a State court only on the grounds that ~~he is~~ in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C.A. (2) (B) The facts underlying the claim 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 offenses.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 59 (e) motions are disfavored and "may only be granted in three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. "

18 U.S.C.A. 3D1.2 All counts involving substantially the same harm shall be grouped together into a single group. Counts involve substantially the same harm within the meaning of this rule.

(a) When counts involve the same victim and the same act or transaction.

(b) When counts involve the victim and two or more acts of transaction connected by a common criminal objective or

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

constituting part of a common scheme or plan.

(c) When one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.

18 U.S.C.A. 3584 (a) If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively "except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt."

STATEMENT OF THE CASE

The petitioner is REQUESTING that the Supreme Court of The United States grant relief asserting the numerous violations of petitioners' Constitutional Rights.

Protected by 28 U.S.C.A. 2254 (2)(B).

HOWEVER, the lower courts have denied petitioner relief arguing the time limitations under the AEDPA. On the contrary, according to 28 U.S.C.A. 2254 (a), the exception, protected by our Constitution would make the time limitation invalid.

The first violation is the protection under the Fifth and Fourteenth Amendments against double jeopardy. The petitioner was indicted, convicted and sentenced for (1) Attempted Murder and (2) Assault with a deadly weapon with intent to kill inflicting serious injury. (p. 12-13) in the same trial and for a single act involving one person (T. 14-17)

STATEMENT OF THE CASE

According to 18 U.S.C.A. 3D1.2 (a)(b) the sentence shall be grouped together. Also 18 U.S.C.A. 3584 (a), states the term must run concurrent. (Harmon v. Lamar), U.S. CT of Appeals 3rd Cir. App. I.O.P. 5.1, 5.3 and 5.7, Also: (State v. Ezell), 159 N.C. App. 103, 106, 582, S.E. 2d. 679, 682 (2003)

Secondly, the prosecution withheld evidence favorable for the defense. A cell phone with a bullet hole in the bottom, that was attached to the belt of the plaintiff, was not entered into evidence. (p. 18 Exhibits) Brady v. Maryland, 373 U.S. 83, 87, 83 S. CT. 1194, 1196-1197, 10 L. Ed. 2d 215 Also held: United States v. Bagley 473 U.S. 667, 105 S. The cell phone was a key piece of evidence that would have collaborate petitioner's claim of self-defense,

STATEMENT OF THE CASE

MORE importantly, petitioners attorney did question the plaintiff concerning the damage to the cell phone and the plaintiff, (Freddie Allen Minton) acknowledges that the cell phone has remained in his possession. (T. 19) The above information was learned when the petitioner overheard plaintiff Freddie A. Minton, bragging to police officers during break at the trial. Defendant told her attorney, Kevin Mauney.

In addition, the petitioners earring was found 4 days later in the area where the petitioner had been assaulted, and recorded in Crime Scene Supplement Report (p. 20). The blow to petitioners head, knocked out 1 earring. On the contrary, the earring was not entered into evidence, nor photographed the area the earring was found. Yet, items such as (1) BEER bottles, (4) torn photo, was entered as evidence for the state. (p. 18)

STATEMENT OF THE CASE

THESE items WERE PROCESSED for finger-prints and there was no match to connect items to petitioner. (Crime Laboratory Report p. 21-22). HOWEVER, BEER bottles and a torn photo WERE the items the state entered into evidence to prove the mitigating factors of premeditation and lay in wait. (p. 18)

Under Brady v. Maryland the state can not suppress the evidence, either willfully or advertly. Furthermore, it is the responsibility of those acting for the government, such as investigators and the police to gather evidence in a professional manner so that the accused receives a fair trial. Unfortunately, because of the friendship between allege victim, Freddy A. Minton and Officer Patrick Huey, the petitioners rights were violated and evidence was purposely over looked or not collected. Such as cell phone and earring. (T. 23-25)

STATEMENT OF THE CASE

Such actions by the police and investigators denied petitioner evidence to prove self-defense. According to Kyles v. Whitley and Giglio v. United States.

MORE OVER, petitioners Sixth Amendment was violated when counsel failed to put a witness for petitioner on the stand to testify. MR. Claude Deberry Eagle's statement would collaborate petitioner's claim of self-defense.

(Investigative Report p. 26) Also

(List of witnesses, excluding Mr.

Eagle p. 27-28) Strickland v. Washington and Von Moltke v. Gillies. In addition counsel failed to adequately investigate obtain an expert in forensic science or research legal facts and documents connected to petitioners case. (p. 29-32) (William (TERRY) v. Taylor), Also held: Wiggins v. Smith Equally important in Smith v. Dretke, the court found ineffective assistance of counsel for failing to present evidence of self-defense.

STATEMENT OF THE CASE

Additionally, in 2012, law firm Womble, Carlyle, Sandridge and Rice, excepted petitioners case pro bono. The case was going back to court and the attorney assigned to represent petitioner, died. In 2020, petitioner filed an M.A.R. after Michelle Poteat agreed to help research petitioners case, and contacted the law firm, WCSR. The law firm sent all evidence they had on petitioners case. In doing so, Michelle Poteat discovered new evidence that was unknown and not presented at petitioners trial. (p. 33-35)

Also: Federal Rule 59(e), (2), (3) states motion may be granted, to account for new evidence and to correct a clear error of law or prevent manifest injustice.

REASONS FOR GRANTING THE PETITION

The petitioner has presented The State of North Carolina and the lower courts ample documents, statements, police reports and 2 affidavits from forensic experts that corroborate petitioners claim of self-defense. The abundance of information and evidence would have likely changed the outcome of petitioners trial; If the evidence had not been withheld or kept undisclosed, preventing the petitioner from receiving a fair trial.

However, the judicial system has turned a blind eye to the many violations, concerning petitioners case, as well as, the miscarriage of justice. Instead, of correcting this issue, the judicial system is trying to cover-up and deny petition on the ground of time limitation. On the contrary, when our forefather wrote the Constitution there was nothing

REASONS FOR GRANTING THE PETITION

written stating a time limitation for protection under the laws of our Constitution. Therefore, petitioner request that The Supreme Court of the United States, grant writ of CERTIORARI, due to the many violations that prevented petitioner from receiving a fair trial and sentenced to double punishment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dena Inez Minton

Date: NOVEMBER, 15, 2023