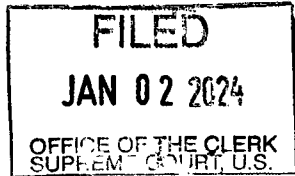


23-6436
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Luis Manso — PETITIONER
(Your Name)

Administrator vs.
Northern State Prison, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Luis Manso, 762786B
(Your Name)

168 Frontage Road
(Address)

Newark, NJ 07114
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. Does Strickland v. Washington allow the Court of Appeals to dismiss the defendant's ineffective assistance of counsel claim based on "strong evidence" of his guilt, while failing to consider the effect of counsel's omission on the application of the jury's consideration of the lesser included offenses charged in the jury instructions?
2. Did the Court of Appeals violate the principles/essence of Brady v. Maryland, in finding no record support that prosecutors bartered with the state's key witness by providing him time alone with his girlfriend at the prosecutors' office, where 1. Knowledge of the encounter only came to light during the testimony of an investigating officer, asserting that the girlfriend was in fact brought to the prosecutors' office; 2. The witness testified to the sexual encounter that ensued; 3. The defendant was precluded from accessing further evidence establishing the encounter, while simultaneously being held liable for failing to produce evidentiary support of his claim?
3. Is the Third Circuit Court of Appeal's reliance on State v. Claxton misplaced when the State's record shows, by voir dire transcripts, that jurors 11 and 14 had indeed discussed their incident of improper communication with other jurors, in direct conflict with the Court's analysis?

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:

RELATED CASES

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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 _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. **C.A. No. 23-1722**

The opinion of the United States district court appears at Appendix _____ to the petition and is

☒ reported at **2023 U.S. Dist. Lexis 56358**; 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 _____ to the petition and is

☒ reported at **244 N.J. 366**; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the **New Jersey Superior Appellate** court appears at Appendix _____ 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 08/25/2023.

☐ 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: 10/16/2023, 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 11/13/2020. 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

5TH AMENDMENT TO THE UNITED STATES CONSTITUTION

6TH AMENDMENT TO THE UNITED STATES CONSTITUTION

14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE

As a result of a fundamentally unjust trial, defendant Luis Manso was deprived of his liberty for a heinous crime that he did not commit. During the trial, the State presented witnesses who had been coached on their testimony. Even more reproachful, the State withheld interview reports and permitted at least two of its witnesses to have access to their significant others at the prosecutor's office and a hotel in exchange for their testimonies incriminating Manso and his codefendants.

Manso gives evidence, through testimony provided at his first PCR hearing, of the fact that prosecutors granted the State's key witness time alone with his girlfriend as a bargaining tool for his testimony against Mr. Manso and his codefendants. Although the lead prosecutor's detective testified, at the PCR hearing, that he did not bring the girlfriend to the prosecutor's office for that purpose, the detective did admit to bringing her there for "investigative purposes regarding the case," and that she provided "valuable information."

At his PCR hearing, Manso's counsel requested that all material related to the key witness's girlfriend, including all interview notes, be provided to Manso. Although the PCR judge assured Manso that he had a right to that material, he (the judge) concluded that it was not available at the moment.

Contrary to the Court of Appeal's assertion, Manso's argument is not limited to whether or not prosecutors bartered with the state's key witness by providing

him time alone with his girlfriend at the prosecutors' office. Rather, Manso's argument goes to exculpatory and impeachment value of the key witness's testimony and the detective's independent verification of the girlfriend's presence at the prosecutor's office before trial. In all State and Federal Court appeals, Manso argued: If the girlfriend of the key witness was at the prosecutor's office for any legitimate purpose related to the investigation, then there is documentation memorializing her presence. Once the detective acknowledged the presence of the key witness's girlfriend at the prosecutor's office, Manso, thru his lawyer, requested copies of the reports, which would contain the purpose for her being there. The rules of discovery mandated he be provided this valuable material. The ongoing challenge for Manso has been the Court's refusal to follow through with providing him with it. Manso requested the reports, and the Law Division Judge acknowledged Manso's right to the material. Nonetheless, the prosecution failed to produce any documentation about the girlfriend's presence at the prosecutor's office, and the State Judge lacked the judicial will to direct the prosecutor to do so. It is submitted that the failure to produce any evidence of the girlfriend's purpose for being at the prosecutor's office, while acknowledging her presence, provided inferential support for Manso's assertion that she was brought to the prosecutor's office surreptitiously as a means to giving the key witness' cooperation. It is critical

to note that the key witness himself later confirmed said purpose, and that he had a sexual encounter with the witness at that time.

It is for this reason that Manso had asked the “[...] Habeas Court to exercise its sound discretion in the granting of a discovery request, consistent with Rule 6 and 7 of the Rules Governing Section 2254 cases.” As such, to limit Manso’s argument to the question of whether or not the prosecution “bartered” with a key witness is a flawed assessment of his overall Brady argument.

The evidence provided against Mr. Manso was circumstantial testimonial evidence given by codefendant originally charged under the same counts as Mr. Manso; however, said witnesses later turned State’s evidence.

Since the core evidence presented to the jury was the testimonies of indicted codefendants, it was essential that Manso be given an opportunity to be heard so that the jury could make a credibility finding that stems from equal grounding. At the very least, the jury would have had the relevant facts needed to consider the lesser included offenses that were charged in the jury instructions. Unfortunately, Manso was denied his constitutional right to testify on his own behalf when his attorney 1. Failed to advise him of this right, and 2. Failed to even confer with Manso regarding his proposed testimony.

During the course of Manso’s trial, it also came to the Court’s attention that there was improper communication with two jurors outside of the courthouse. A

separate incident with another juror also came to the court's attention. After learning of these separate incidents, the trial judge questioned jurors 11 and 14 together, and then separately questioned the third juror regarding his incident. After jurors 11 and 14 had assured the judge that they had not discussed their incident with any other members of the jury, it was then discovered from the third juror, that he only brought his incident to the attention of the court because of what he learned from jurors 11 and 14. Thus, Manso provided evidence, through transcripts of the judge's questioning of jurors 11 and 14, that they had indeed discussed their incident of improper communication with other jurors. Manso's counsel joined codefendants' counsels in a motion to voir dire the entire jury. However, that request was denied.

With the State actively engaging in misconduct, Manso's attorney failing to advise him of his fundamental right to testify on his own behalf, and having a tainted jury, Manso was completely denied of his Constitutional right to due process and a fair trial. Moreover, the post-conviction relief court and all other courts below this honorable Court twisted themselves into knots in an attempt to justify the actions of the State and trial counsel, further depriving Mr. Manso of his rights.

Manso has served 25 years thus far on a 60 year aggregate sentence for a crime he has not committed. He prays that this Court will review this matter with fairness and equity.

REASONS FOR GRANTING THE PETITION

The Petitioner-Appellant herein makes a substantial showing of the denial of constitutional rights and that reasonable jurists would agree that the petition for habeas corpus should have been resolved in a different manner where the District Court and Third Circuit Court of Appeals misapplied the standard governing petitions for habeas corpus, set forth under 28 U.S.C. §2254(d). Specifically, the lower courts misapplied the "unreasonable application of... clearly established Federal law" provision of the A.E.D.P.A., as determined by the United States Supreme Court. Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 1523, 146 L.Ed.2d. 389, (2000). Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case. Williams, 120 S.Ct. at 1523. In the case at bar, the lower courts identified the correct legal principle under the federal standard governed by Strickland v. Washington, 466 U.S. 668, as applied to ineffective assistance of counsel claims, but unreasonably applied that principle to the appellant's case.

The unreasonable application of the Strickland standard in this case lies in the lower Courts' truncated consideration of appellant's assertion of ineffective assistance of counsel. Said claim was based upon counsel's failure to advise the

appellant of his right to testify in his own behalf. The claim was only given a perfunctory review, with the court ultimately rejecting the claim based on "strong evidence of guilt." The record categorically shows, however, that the courts never reached the question of the impact counsel's actions had on the jury's ability to evaluate the lesser included offenses that were submitted for its consideration. The issue, therefore, is not simply a matter of whether counsel made, or did not make, a strategic decision that could simply be dismissed based upon the quantum of evidence of guilt. The issue is whether or not said decision, or lack of decision, constituted sound trial strategy affecting the jury's consideration of the lesser included offenses. The failure to reach the appropriate standard of review establishes that the fact finding processes through which that determination was made were inadequate and therefore unreliable. Evans v. Rogerson, *supra*, 77 F.Supp.2d 1014, 1022, (1999). ("Unreliability stems from failure to address relevant evidence... or *inappropriately abbreviated analysis of a substantive issue and its related evidence.*" (Emphasis added)). The appellant therefore presents a question of fundamental importance necessitating a direction issued by the United States Supreme Court regarding the required degree of analysis, and the court's appropriate role, necessary to the proper application of lesser-included offenses under American jurisprudence in the constitutional context.

The appellant herein also makes a substantial showing of a denial of constitutional protection involving the legal parameters of Brady v. Maryland, supra. Fundamentally, the question here is whether the dictates of Brady regarding the State's duty to provide exculpatory evidence can truly be honored where 1) the State first fails to provide exculpatory evidence; 2) the existence of said evidence is only revealed through direct testimony of an investigating officer; 3) despite acknowledging the truth of the assertion, the State then fails to provide access to the discovered exculpatory evidence that is also incriminatory of State action in gathering said evidence, and 4) notwithstanding the State's failure to provide access to the evidence, the court thereafter relies upon the defendant's failure to produce the concealed evidence as the basis for denying his Brady claim. The appellant submits that once the State acknowledges the existence of exculpatory evidence in its possession that was not provided to the defense, evidence that the State's witness attests to having but the State fails to provide, the defendant is entitled to a jury instruction that states an adverse inference can be drawn from the State's failure to so produce. The instant case therefore presents an issue of significant judicial importance where it offers the opportunity for the United States Supreme Court to expound on the complexities of the Brady standard, and potentially expand the protections afforded therefrom.

During the course of Manso's trial, it also came to the Court's attention that there was improper communication with two jurors outside of the courthouse. A separate incident with another juror also came to the court's attention. After learning of these separate incidents, the trial judge questioned jurors 11 and 14 together, and then separately questioned the third juror regarding his incident. After jurors 11 and 14 had assured the judge that they had not discussed their incident with any other members of the jury, it was then discovered from the third juror, that he only brought his incident to the attention of the court because of what he learned from jurors 11 and 14. Thus, Manso provided evidence, through transcripts of the judge's questioning of jurors 11 and 14, that they had indeed discussed their incident of improper communication with other jurors. Manso's counsel joined codefendants' counsels in a motion to voir dire the entire jury. However, that request was denied.

The matter here is different from that which is found in United States v. Claxton 766 F.3d 280, in that the Claxton speculated as to potential communication, where as this case established on the record that additional communication had taken place.

For the reasons stated herein, it is respectfully submitted that the appellant provides significant and comprehensive reasons for the granting of the instant petition for Certiori.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Quin M. Janso

Date: December 29, 2023