23-6504

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

TORMU E. PRALL,

PETITIONER,

VS.

ATTORNEY GENERAL OF NEW JERSEY,
ADMINISTRATOR NEW JERSEY STATE PRISON,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TORMU E. PRALL
#700294B/650739
NEW JERSEY STATE PRISON
P.O. BOX 861
TRENTON, NJ 08625

QUESTIONS PRESENTED

1. Is it a grievous wrong when the lower federal courts demonstrably misread and reshape a habeas corpus claim?

2. Is it time for the U.S. Supreme Court to say what cause and prejudice is?

3. Did the denial of counsel at a critical stage actual prejudice that infect the entire trial with errors of constitutional dimensions?

4. Are the circumstances in Questions 1 to 3 above extraordinary to justify relief under Rule 60(b)?

5. Would it be inequitable if the decisions of the lower federal courts are allowed to stand?

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF CITED AUTHORITIES

Cases

Rules

OPINIONS BELOW

These Decisions are listed in Appendices A to D.

JURISDICTION

The unpublished decision of the Court of Appeals was issued May 25, 2023. Pursuant to 28 U.S.C. 1254(1), this Court has jurisdiction to review the decision of the United States Court of Appeals for the Third Circuit.

STATEMENT OF THE CASE

Ninety days after indictment for murder, attempted murder, and arson, three officers came to pick the Petitioner Tormu E. Prall ("Prall") up from the county jail. They insisted that Detectives Edgar Rios and Robert Cowan wanted to speak With him (12T 8-1 to 3). Prall was handcuffed and shackled and placed in the back of the squad car. This communicated to him that he was not free to decline the request or terminate the encounter. His compliance was compelled (12T 8-14).

About ten minutes or so into the ride, the three transporting officers parked on the side of the road. They sodomized Prall in the same fashion one intimate partner romantically pleasures another; roughly plucked, pulled, squeezed, bent back and twisted his fingers; suffocated him with garbage bags or plastic typewriter covers while he had a sock jammed in his mouth; and promised worst

treatment if he did not adopt the confession that they fabricated and give Detectives Rios and Cowan carte blanch to manufacture fire-scarred photographs of his lips and hands.

Bodily harm was threatened if he did not regurgitate the details they fed him, which included making up that he burned his hands and lips in the fire and a hospital in New York treated the wounds with skin graft surgery. The torture was ingeniously designed not to rupture the anus or leave cuts, abrasions, bruises, disfigurements, and any other telltale marks.

In the police station, the Prall was placed in a small interview room and chained to a bench. Detectives Rios and Cowan entered. Prall submitted to Detectives Rios and Cowan questioning, and manufacturing photographs, of him as the three transporting officers had instructed. He confabulated with answers that he thought would be met with approval.

Detective Edgar Rios and Patrolman Sean Gaither used the absence of counsel to their advantage. They misrepresented that the Prall's lips and hands were burned. Prall was shuttled back to the county jail when Detectives Edgar Rios and Robert Cowan and Patrolman Sean Gaither finished having their way with him.

At a January 7, 2013 hearing on a Motion to suppress the manufactured photographs, defense counsel got Detective Rios to admit that he and Detective

Cowan could have served any papers related to the case upon the defendant at the county jail. When defense counsel asked why he was not contacted before and during the transport to the police station, Detective Rios, then a 32 veteran, said to be unaware that counsel for Prall was an constitutional imperative. The trial judge denied the Motion.

Despite Paul Bethea; the Trenton Police booking records; the Sheriffs that extradited Prall from Connecticut to New Jersey; and videotaped interrogation; all confirming Prall did not have fresh or healed wounds that were visible to the naked eye, Detective Rios and Patrolman Sean Gaither invented that they noticed burns to the hands of Prall.

Sixteen witnesses for the prosecution and one for the defense (seventeen in total) testified during the trial. When defense counsel asked Detective Rios did he compare pre-fire photographs of Prall's hands, Detective Rios answered in the negative. Defense counsel was trying to establish that Prall has mild skin discoloration and that detectives manufactured photographs to make that condition seem as though Prall had fired scarred lips and hands.

Even though cross-examination concerning the pre-fire photographs was not supposed to lead to the statements taken in violation of the right to counsel being used as evidence in the state's case-in-chief, the trial judge ordered Detective Rios to inform the jury that Prall told Detective Rios that Prall did not have any burns to

his hands prior to the arson murders he was charged with. The prosecutor reminded the jury of these uncounseled statements in his summation.

Prall wished to testify. On January 29, 2013, a hearing was conducted to determine whether the statements the police acquired from Prall were voluntary. All of the testimony came from Detective Edgar Rios, not the actual transporting officers themselves. The prosecutor was against having the transporting officers testify about the pressure they applied to make Prall cooperate with Detectives Edgar Rios and Robert Cowan during the interview.

The trial judge ruled that if Prall took the stand or attempted to put on a defense, the prosecution could use those statements to impeach his credibility; and the jury would be allowed to view the videotaped interrogation.

That ruling had an adverse impact on what type of impeachment to undertake; which arguments to make to the jury; the basic trial strategy to adopt; and the quality and the effectiveness of the legal representation received. Being that rights, privileges, and defenses were irretrievably lost and waived as a result of the Prall having to navigate the vehicular journey to the police station without the assistance of counsel, the prejudice (which is too hard to measure) that ensued therefrom, caused for him to be convicted and sentenced to life in prison.

A timely appeal was taken. The State Appellate Court summarily rejected the arguments in the pro se supplemental brief, raising Privilege Against Self-

Incrimination and denial of counsel claims, and overturned the conviction because of the inadmissibility of a dying declaration and other-crimes evidence.

The state petitioned the New Jersey Supreme Court. Prison officials intercepted the envelope with the pro se Cross-petition inside address to appellate counsel that Prall gave to his housing unit officer for mailing. App. F. to Pet. for Cert. 1. In New Jersey, an indigent defendant must submit a pro se Cross Petition for Certification to the New Jersey Supreme Court through his attorney. App E. to Pet. for Cert. 3-4. On January 31, 2018, the Supreme Court for the State of New Jersey reversed the Appellate Division and reinstated the convictions.

Prall applied for federal habeas corpus on the ground that police coerced him into a confession and denied him counsel during the critical stage of the trip to the precinct. In construing the petition, the district court fused the coerced confession and denial of counsel claims into one, ignoring that the latter stands on its own.

Respondent filed a motion to dismiss and their answer, arguing that the claims were unexhausted. Prall responded. In that response Prall clarified that he initially though that appellate counsel refused to submit his pro se Petition for Certification to the New Jersey Supreme Court. Upon inquiring, appellate counsel informed Prall that he did not receive it.

The district court found that Prall failed to establish cause, denied his claims as procedurally defaulted, and did not address prejudice. It rested its decision on

the flawed premise that Petitioner alleged he sent counsel a pro se notice of petition, but fails to explain why he did not just file the pro se document with the New Jersey Supreme Court.

Prall sought a Certificate of Appealability ("COA"). The court of appeals concluded that even if Prall could show cause, he couldn't show prejudice. App D. to Pet. For Cert. 1. It also denied rehearing. App. C. to Pet. for Cert. 1. This court refused to grant certiorari. Prall then moved to reopen his habeas proceedings under Federal Rule of Civil Procedure 60(b). He argued that the district court overlooked that he established cause, and mischaracterized the underlying basis of his denial of counsel claim. The district court denied the motion, and cited once again that the claim was procedurally defaulted.

Prall went back to the Third Circuit for a COA. The Third Circuit denied his COA. It found that Prall failed to show extraordinary circumstances; that the district court lacked jurisdiction over his denial of counsel claim; App. B to Pet. for Cert. 1, and denied rehearing by the panel and the court en banc. App. A. to Pet. For Cert. 1

REASONS FOR GRANTING THE PETITION

I. IT'S TIME FOR THIS COURT TO SAY WHAT CAUSE AND PREJUDICE IS

In Wainwright v. Sykes, 433 U.S. 72, 87-88 (1977), this court "[left] open for the resolution in future decisions the precise definition of the cause and prejudice standard." Ibid. Forty years later the court held that: "A state prisoner may overcome the habeas prohibition on reviewing procedurally defaulted claims if he can show" that "some objective factor external" to the defense impeded counsel's efforts to "comply with the state procedural rule and actual prejudice resulting from the alleged constitutional violation." Davila v. Davis, 137 S.Ct. 2058, 2064-2065 (2017).

Due to the unfortunate scenario of this court never giving content or meaning to cause and prejudice, the district and appeals courts in this case, declined to accept that interference with outgoing legal mail meets that standard. This court's guidance is urgently needed.

II. IT WOULD BE INEQUITABLE IF THE DECISIONS OF THE LOWER FEDERAL COURTS ARE ALLOWED TO STAND

In determining whether a "Rule 60(b)(6)" vacatur is warranted, extraordinary "it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process."

Liljeberg v. Health Services Corp., 486 U.S. 847, 846 (1988). A court, in making such determination, "must continuously bear in mind that to perform its high function in the best way 'justice must satisfy the appearance of justice." Ibid.

Deprivation of the presence and assistance of an attorney during the critical stage of the vehicular journey from the county jaol to the police station is " a deliberate and especially egregious error" that "infect[ed] the integrity of the proceeding." Brecht v. Abrahamson, 507 U.S. 619, 638, n 9 (1993).

"[J]urists of reason" would not only "find" that Prall has shown "the denial of a constitutional right" to overcome his procedural default, but that the district court and appeals courts were wrong in their procedural rulings." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

There is no logical distinction between why would the Third Circuit be eagered to consider prejudice in its August 3, 2021 Order, App. B. to Pet. For Cert. 1, but not its March 3, 2023 Order. App. A. to Pet. For Cert. 1. Holding Prall in custody in violation of the constitution is the injustice Liljeberg said the courts must be cognizant of.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Tormu E. Prall, pro se

Dated: October 18, 2023