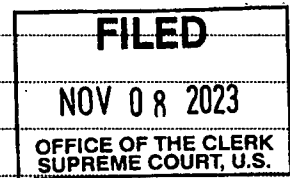


No. 23-6610

ORIGINAL

IN THE
SUPREME COURT
OF THE UNITED STATES



WENDELL C. HELFRICK,
Petitioner

vs.

RUSSELL L. RABB, III
Defendant

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

Wendell C. Helfrick #1011761

River North Correctional Center

329 Dellbrook Lane

Independence, Virginia 24348

QUESTION(S) PRESENTED

1. If a State statute deprives an individual from utilizing the right of Due Process, does this not violate, established guarantees, that are protected by the Fourteenth Amendment of the United States Constitution cause inequity
2. Does immunity apply to an agent of the law that violate the United States Constitution Article III §2 "Cases" and "Controversies", by denying the rights governed by the Due Process Clause of the Fourteenth Amendment
3. If an outcome determinative standard is not adjudicated through the use of due process, for an exclusion result, would not this be considered a violation of the guarantees governed by the Fourteenth Amendment

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES CITED

CASES

Barefoot v. Estelle, 463 U.S. 880, 893 (1983)
Doe v. Va. Dep't of State Police, 713 F.3d 745, 757 (4th Cir. 2013)
Elinger v. Delo, 16 F.3d 878, 883 (8th Cir. 1994)
Harvey v. Warden of Coffeewood Corr. Ctr., 268 Va. 5, 597 S.E.2d 58, 59 (2004)
Lamar v. Ebert, 681 Fed. Appx. 279 (2017)
Libertarian Party of Va. v. Judd, 718 F.3d 308, 315-16 (4th Cir. 2013)
Lujan v. Defs of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed3d 351 (1992)
Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003)
Reed v. Goertz, 143 S.Ct. 955, 215 L.Ed. 218 (U.S. Apr. 25, 2022)
Slack v. McDaniel, 529 U.S. 473, 484 (2000)
State v. Scott, Slip Opinion No. 2022-Ohio 4277

STATUTES

28 U.S.C. § 2253(c)(2)
42 U.S.C. § 1983
R.C. 2953.71(G)
R.C. 2953.71(L)
Va. Code § 9.1-1101(A)
Va. Code § 19.2-327.1(A)-(G)

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment Due Process Clause
U.S. Constitution Article III § 2

OPINIONS BELOW

For cases from Federal Court:

The opinion of the Fourth Circuit Court of Appeals appears at Appendix C to the petition and is unpublished

The opinion of the Western District Court appears at Appendix B to the petition and is dismissed

For cases from State Court:

The opinion of the Circuit Court appears at Appendix A to the petition and all is dismissed

JURISDICTION

For cases from Federal Court:

The date on which the Fourth Circuit Court of Appeals decided my case was August 29, 2023

The date on which the Western District Court decided my case was December 1, 2021

For cases from State Court:

The date(s) on which the Circuit Court decided my case(s) was: September 11, 2017; January 2, 2019; March 11, 2022

CONSTITUTIONAL PROVISIONS INVOLVED

The right of a state prisoner to seek relief to prove an injustice through the use of State and Federal statutes is a necessary procedure of due process. Any violation of such, via State and Federal laws, undermines the Due Process Clause written in the United States Constitution.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual services in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 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 state 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.

STANDARD OF REVIEW

DENIAL OF CERTIFICATE OF APPEALABILITY

In Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Court clarified the standards for issuance of a Certificate of Appealability (hereinafter "COA"):

A prisoner seeking a COA need only demonstrate a "substantial showing the denial of a constitutional right." A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the District Court's resolution of his constitutional claims or that jurists could conclude the issue(s) presented are adequate to deserve encouragement to proceed further... We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition (in this case 42 U.S.C. § 1983 Complaint).

Plaintiff demonstrated this standard within the Complaint in the District Court following the very same guidelines set-fourth in Lamar v. Ebert, 681 Fed. Appx. 279 (2017) (with all prior litigations); and State v. Scott, Slip Opinion No. 2022-Ohio 4277.

STATEMENT OF THE CASE

Plaintiff filed a 42 U.S.C. § 1983 Complaint in the Western District Court (Roanoke Division) of Virginia challenging the constitutionality of the Virginia DNA statute (Va. Code § 19.2-327.1) citing Due Process violation and its acting agent controlling the Defendant (Russell L. Rabb, III, Commonwealth's Attorney). The Complaint was dismissed on December 1, 2021. Plaintiff filed a Certificate

of Appealability in the Fourth Circuit Court of Appeals and the judgment of the District Court was affirmed on August 29, 2023.

The Plaintiff was convicted by a jury in the Circuit Court of Culpeper County, Virginia, of (2) two counts of sodomy and (1) one count of breaking and entering with the intent to commit rape. The Court imposed the sentence as recommended by the jury of (2) two Life Sentences plus (20) twenty years in prison. Plaintiff exhausted all State and Federal remedies litigating the criminal procedures.

Plaintiff filed (3) three separate motions for the testing and/or retesting of the biological evidence using a more modern method to prove his innocence and (2) separate motions for the storage, preservation and retention of human biological evidence in the Circuit Court of Culpeper County, Virginia. Defendant has been the acting agent in all the aforementioned matters. All motions for the requested testing and/or retesting were denied, and only the second motion for the storage, preservation and retention of the evidence was granted on September 9, 2019 via video hearing.

Plaintiff filed a 42 U.S.C. § 1983 on November 19, 2020 against Defendant, Russell L. Rabb, III, Commonwealth's Attorney for Culpeper County, Virginia, citing due process violations stemming from the denial of access to the biological evidence, used at trial, for the testing and/or retesting using a more modern method that had been employed initially by the Department of Forensic Science (hereinafter DFS). Citing *Lamar v. Ebert*, 681 Fed. Appx. 279 (2017).

The Western District Court dismissed Complaint and the Fourth Circuit Court of Appeals affirmed the Court's decision as aforementioned. Plaintiff now comes by way of Writ of Certiorari to address the following

issue(s) the Fourth Circuit Court of Appeals, in its per curiam opinion, declined to address on record.

REASONS FOR GRANTING THE PETITION

(Issue 1) If a state statute deprives an individual from utilizing the rights of due process, by way of a controlling agent, is this not counter to established guarantees of the United States Constitution and its Fourteenth Amendment.

The Virginia DNA statute, §19.2-327.1, is a Virginia law designed for scientific analysis of newly discovered or previously untested scientific evidence. Under this DNA statute, a petitioner must satisfy the burden of proof to (5) five of the (6) six sections of this Virginia Code (A)-(F), as the sections include sub-sections to be overcome as well. Section (G) of Va. Code §19.2-327.1 is the matter in question.

Virginia Code §19.2-327.1(G) states: "An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus proceeding or any other appeal. Nothing in this section shall create any cause of action for damages against the Commonwealth or any of its political subdivisions or any officers, employees or agents of the Commonwealth or any of its political subdivisions.

Even if that statutory language is somehow unclear, the Supreme Court of Virginia has confirmed that Section (G) "unambiguously, means that Circuit Court proceedings under the Virginia DNA statute are not subject to review in State or Federal Court, whether by direct appeal or a petition for Writ of Habeas Corpus."

See *Harvey v. Warden of Coffeewood Corr. Ctr.*, 268 Va. 5, 597 S.E.2d 58, 59 (2004).

Plaintiff thereby challenges the constitutionality of Virginia DNA statute, specifically Section (G), as relief cannot be obtained, violating the Due Process Clause of the Fourteenth Amendment, even if favorable results were obtained under the DNA statute and Habeas Corpus relief may be secured for some other reason, it would still be of little comfort.

Reed v. Goertz, 143 S. Ct. 955, 215 L. Ed. 2d 218 (U.S. Apr. 25, 2022) states "a procedural due process claim of two elements: (i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process. Importantly, the U.S. Supreme Court has stated that a procedural due process claim is not complete when the deprivation occurs. Rather, the claim is complete only when the State fails to provide due process."

(Issue 2) Does immunity apply to a controlling agent that violates or acts in violation of, the United States Constitution Article III § 2 "Cases" and "Controversies" by argumentative denial of governed due process of law.

As this Court has emphasized, the core component of standing, is essential and unchanging part of Article III's case-or-controversy requirement. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

At its irreducible constitutional minimum, the issue of standing includes three requirements:

- (1) that the Plaintiff suffer an injury-in-fact...
- (2) a causal connection between the injury and the conduct complained of...

(3) that it is likely, rather than speculative, that the injury be redressed by a favorable decision.

First, Defendant's action or there lack of, despite repeated filings for DNA testing, has deprived Plaintiff of his liberty interests in utilizing State procedures to obtain: (i) reversal of conviction; (ii) a pardon; or (iii) reduction of sentence.

Second, Defendant declares immunity. Importantly, Defendant has not denied that he is the public official with custody of the DNA evidence that Plaintiff seeks to have tested. Even though the DFS acts as custodian of the evidence, the DFS provides a service to the Defendant, not the other way around. See Va. Code § 9.1-1101 (A).

Regardless of Defendant is but one of several persons or entities in charge of implementing the DNA statute is not controlling. See Libertarian Party of Va. v. Judd, 718 F.3d 308, 315-16 (4th Cir. 2013); and Doe v. Va. Dep't of State Police, 713 F.3d 745, 757 (4th Cir. 2013). The 42 U.S.C. § 1983 Complaint is replete with allegations that the Defendant has refused to allow access to the evidence for DNA testing, thereby Complaint should fulfill Lujan's causation requirement.

(Issue 3) If an outcome determinative standard has not been adjudicated through the use of due process, for an exclusion result, is deprivation attached, invading the Fourteenth Amendment guarantee.

In State v. Scott, Slip Opinion No. 2022-Ohio 4277 (until this opinion appears in the Ohio Official Reports advance sheets), "exclusion result" and "outcome determinative" are defined as follows:

An "exclusion result" is a DNA test result "that scientifically precludes or forecloses the subject

offender as a contributor of biological material recovered from the crime scene or victim in question." R.C. 2953.71(G)

"Outcome determinative" means that "there is a strong probability that no reasonable factfinder would have found the offender guilty of the offense" for which he or she was convicted if the DNA results had been presented and found relevant and admissible at trial and "had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the offender's case." R.C. 2953.71(L).

Plaintiff has litigated, to the best of his limited abilities, the necessity of testing the evidence, employing a more modern testing method (Y-STR DNA analysis), that initial testing resulted in as inclusive, on the evidence that was tested as well as the evidence that was never tested for finality. The Defendant has been an adversary to all State and Federal litigations on this matter.

As the Y-STR DNA testing isolates the Y-chromosome that is only present in males, it is also more sensitive than ordinary PCR and STR testing, as it is more useful when there is cross-contamination of a sample or a DNA mixture profile exists. Not only does the Y-STR DNA testing provide no randomness on the chromosomes, but also reasons other than the presence of fault or bias by whom did not utilize a proper method to confirm or deny the accused's DNA as a contributor on the evidence, that should require a definitive analysis in the interest of justice.

At minimum, an "exclusion result" would significantly give credence to the evidence or disaffirm the notion of guilty by way of the evidence, and would also eliminate any remaining credibility of trial testimony.

CONCLUSION

The petition for Writ of Certiorari should be granted based on the aforementioned.

Plaintiff is unclear as to sending exhibits for support but has, or can obtain, documentation to help aid in this Courts decision making, upon request.

Plaintiff humbly request any and all relevant materials be reviewed thoroughly as Plaintiff has tried to litigate codes, laws and statutes factually.

Plaintiff also ask for this Court to review the following cases (not cited herein) that may be of importance for decision making to this petition:

Lamar v. Ebert, 2014 U.S. Dist. LEXIS 195223

Lamar v. Ebert, 2015 U.S. Dist. LEXIS 187191

Lamar v. Ebert, 2017 U.S. Dist. LEXIS 133494

Lamar v. Ebert, 2022 U.S. Dist. LEXIS 215776

District Attorney's Office for the Third Judicial District v. Osborne, 557 U.S. 52, 69-72, 129 S. Ct. 2308, 174 L. Ed. 2d 38 (2009)

Hodges v. Abraham, 300 F.3d 432, 443 (4th Cir. 2002)

Skinner v. Switzer, 562 U.S. 521, 131 S. Ct. 1289, 179 L. Ed. 2d 233 (2011)

Knapp v. Edwards Laboratories, 61 Ohio St. 2d 197, 199, 400 N.E. 2d 384 (1980)