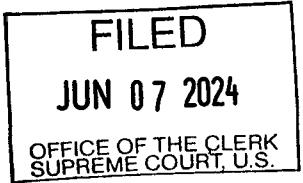


No. 23-7794



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL T. WASHINGTON — PETITIONER

VS.

ROBERT MAY, Warden, and ATTORNEY GENERAL
OF THE STATE OF DELAWARE — RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

Michael T. Washington

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QUESTION PRESENTED

During the course of Mr. Washington Trial, State's Attorney Stated several different times to the trial judge, jurors, and defense that it's main witness (Isaiah Fields) was not obtaining any "benefit" for his Trial Testimony, Evenfurther the State Attorney main witness Mr. Fields testified he was not gaining any benefit for his trial testimony.

"However this was not the case"

(2) months after Mr. Washington was convicted. The State's Attorney filed a substantial assistance motion with an entirely different Judge then the one presided over the trial for it's main witness (Isaiah Fields) Trial Testimony in helping convict Mr. Washington. Trial Court granted the substantial assistance motion and the State Attorney main witness (Isaiah Fields) "Prison" "Sentence" was "Reduced". Trial Court or the State Attorney never disclosed any of this evidence to Mr. Washington/Defense/Discovery.

Mr. Washington uncovered this favorable suppress evidence and raised it threw Counsel on 2nd Postconviction as newly discovered evidence showing the State Attorney in it's main witness Isaiah Fields had an undisclosed plea tacit agreement that resulted in a Brady violation. The 3rd Circuit Court relied upon the trial court judgement in procedurally bar this Brady violation claim from review

stating the evidence is not newly discovered it was available for defense attorney's to raise on direct appeal and/or 1st Postconviction have trial counsel check the State witness Mr. Fields criminal docket.

The case thus presents the following questions:

1. Is State Attorney undisclosed substantial assistance motion "Newly Discover Evidence" resulting in a Brady violation? And violation of Petitioner 5th and 14th Amendment rights.
2. Did State Attorney in it's main witness commit perjury or Fraud on the Court? By having a undisclosed Plea Tacit Agreement that resulted in a violation of Brady?
3. Did Trial and 3rd Circuit Court of Appeals erred by procedurally bar this Brady violation claim for review?
4. Was Trial Counsel and 1st Postconviction Counsel Ineffective Assistance of Counsel for "Withdrawing" from representing Mr. Washington? In raising this favorable suppress evidence on Mr. Washington direct appeal in 1st Postconviction? Furthermore was Court appointed Trial Counsel in 1st Postconviction Counsel ineffective assistance of counsel for neglecting to check State Witnesses "Criminal Docket" in raise a claim showing a Brady? Thus showing constitutional violation of Mr. Washington 6th Amendment right. And do to direct

appeal and 1st Postconviction Counsel withdrawing motions do Mr. Washington over-come the procedural default.

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PETITION FOR WRIT OF CERTIORARI

Michael T. Washington, an inmate currently incarcerated at James T. Vaughn Correctional Center in Smyrna, Delaware respectfully Petition's this Court Pro, Se for a Writ of Certiorari to Review the Judgment of the 3rd Circuit Court of Appeals, and Delaware Trial Court.

OPINION BELOW

Supreme Court of Delaware denied Petitioner Washington direct appeal reported as State of Delaware v. Michael Washington Criminal ID# 110, 2011 on (October 14th 2011) Superior Court of Delaware denied Mr. Washington 1st Postconviction on September 27th 2016, Supreme Court of Delaware affirm its decision on April 28th 2017 threw Counsel Petitioner Washington filed a 2nd Postconviction which was denied on November 9th, 2021, Supreme Court of Delaware affirmed its decision on April 7th, 2022 Petitioner timely filed a 28 U.S.C. 2254 Writ for Habeas Petition in the District Court of Delaware reported as Michael Washington v. Robert May, Warden, and Attorney General of the State of Delaware Civil Action No: 17-601-CFC on September 30th 2022 District Court denied Petitioner 28 U.S.C. 2254 Habeas, Petition and Reconsideration on August 24th 2023 U.S. Third Circuit Court of Appeals denied Petitioner request for Certificate of Appealability on February 7th 2024 and rehearing on April 25th 2024 reported as Michael T. Washington V. Robert May Warden James T. Vaughn Correctional Center; Attorney General of Delaware No. 23-2756.

These court orders are attached in Petitioner Washington Appendix.

JURISDICTION

Mr. Washington's Petition for hearing in the U.S. 3rd Circuit Court of Appeals was denied on Feb 7th 2024 and rehearing on April 25th 2024. Mr. Washington invokes this Court Jurisdiction under 28 U.S.C. §1257, having timely filed this Petition for a Writ of Certiorari within ninety days of the 3rd Circuit Court of Appeals Judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

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 service 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.

UNITED STATES CONSTITUTION, Amendment XIV

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.

STATEMENT OF THE CASE

According to Delaware Rule 16 Discovery in inspection (a)(c) upon request of the Petitioner for documents and tangible objects the State shall permit the Petitioner to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the State, and which are material to the preparation of the defendant's defense or are intended for use by the State as evidence in chief at the trial or were obtained from or belong to the defendant. Furthermore in (Brady v. Maryland) Brady's Rule applies equally to evidence that could have been used for impeachment purposes. A defendant has no burden to scavenge for hints of undisclosed Brady material even if the material part could be found in public records, rather the Prosecution's duty to disclose under Brady is absolute, it does not depend on defense Counsel's actions, and the defense is entitled to presume that Prosecutors have discharged their official duties. Under Brady the duty to disclose evidence is applicable even though there has been no request by the accused. Quoting Strickler, 527, U.S. at 280 (United States v. Agurs, 427 U.S. 97, 107). This case presents the question of whether the trial court and 3rd Circuit Court of Appeals Erred in procedurally bar Petitioner newly discovered evidence claim for

review showing State's Attorney and its main witness committed fraud on the Court in the Defense by having a undisclosed Pea Tacit Agreement that resulted in a Brady violation and/or violation of Petitioner Mr. Washington 5th and 14th Amendment right.

On September 28th 2009, the Petitioner Mr. Washington was indicted by a Grand Jury on (2) Counts Murder in the 1st Degree (2) Counts of Attempted Robbery, (2) Counts Possession of Firearm during Commission of a Felony. (1) Count Possession of a Firearm by a Person Prohibited. During a Jury bench trial Petitioner was found guilty of the lesser offense of Manslaughter and the (3) weapon charges in acquitted of the attempted Robbery. Petitioner was sentence to 86 years Level (V) suspended after (64) years Level (V) Follow by decreasing levels of (4) and (3). On Direct Appeal Petitioner trial attorney filed a motion to withdraw stating their was no meritorious issues to raise. Supreme Court of Delaware Granted Trial Counsel withdraw motion and affirmed Petitioner Direct Appeal. Petitioner timely filed a Rule 61 Postconviction in the Superior Court of Delaware. Trial Court appointed counsel (Andrew Withrell ESQ.) to represent Petitioner on first Rule 61 Postconviction. Attorney Andrew Withrell also motion the trial court to "withdraw" stating he to agree with the trial attorney opinion their was no meritorious claims to advocate on appeal. Ultimately the Superior Court granted first Postconviction withdraw motion and denied Petitioner's first Rule 61 motion for relief. Supreme

Court of Delaware affirmed its decision on April 28th 2017 threw Court appointed Counsel Petitioner was provided representation to submit a 2nd Rule 61 Postconviction arguing existing newly discovered evidence showing State Attorney in it's main witness had an undisclosed Plea tacit agreement that resulted in a violation of Brady and the suppressed evidence if presented to a jury would have undermine confidence in the verdict.

On 2nd Postconviction threw Court appointed Counsel (Patrick J. Collins, ESQ.) Mr. Collins demonstrated the State's; Attorney withheld and misstated the facts of the evidence in committed fraud on the court at trial by stating to the Trial judge, Jurors, and defense it's main witness was not obtaining any benefit for his trial testimony. Evenfurther the State's Attorney wrongfully allowed it's main witness to testify he was not obtaining any benefit for his trial testimony, when this was not at all the case. (2) months after the Petitioner Mr. Washington Trial/Conviction and about (1) month before sentencing the State's Attorney filed a substantial assistance motion do to its main witness trial testimony in helping to convict the Petitioner. Moresaid the State's Attorney discreetly filed the substantial assistance motion with an entirely different judge then the one who presided over the actual trial. State's Attorney substantial assistance motion was "granted" in it's main witness prison sentenced was reduced. None of this material evidence of the substantial assistance motion or granted of it was disclose to the defense. Appointed

Counsel for Petitioner discovered this suppressed evidence on 2nd Postconviction and presented it as newly discovered evidence showing State's Attorney in it's main witness (Isaiah Fields) had an undisclosed Plea tacit agreement that resulted in a Brady violation and/or violation of Petitioner 14th Amendment rights. Even further appointed 2nd Postconviction Counsel (Patrick J. Collins) demonstrated 3 pieces of new evidence was imperative to the defense and upon Jurors review would have undermine the confidence in the verdict. Petitioner Mr. Washington hereby argue Trial Court and 3rd Circuit Court of Appeals decisions was completely erroneous to have issue an order to procedurally bar this transparent colorable claim of a Brady violation for review which demonstrated on its face a constitutional violation of the Petitioner 5th and 14th Amendment rights. Trial Court and 3rd Circuit Court of Appeals judgement that Petitioner Brady violation claim was not newly discovered evidence the undisclosed substantial assistance motion and granted of it was on the State witness (Isaiah Fields) criminal docket and available in time for Trial Counsel to raise on Direct Appeal and/or first Postconviction Counsel to raise on Rule 61 Postconviction just like the cases (State v. Jones, 2019 Del. Super. LEXIS 641)(State v. Starling, 130 A.3d 316). Trial Court and the 3rd Circuit Court of Appeals judgment to procedurally bar this Brady violation claim for review is mistaken. The rules of Brady is clear. Counsel/petitioner has no burden to scavenge for hints of undisclosed Brady material. Even if the material is impeaching in part could be located in public

records. Rather the prosecution's duty to disclose is absolute it does not depend on defense Counsel actions. Therefore the undisclosed suppressed material evidence raised on Petitioner 2nd Postconviction showing an clear constitutional violation of his 5th and 14th Amendment rights is newly discovered evidence. Trial Court and the 3rd Circuit court of Appeals order to procedurally bar this Brady violation claim for review was incorrect in the lower court judgments cause a miscarriage of justice that resulted in the Petitioner Indictment, Trial, and Appeal proceedings to be fundamentally unfair. [See Court orders in the Appendix]

REASONS FOR GRANTING THE WRIT

A. To avoid erroneous deprivations of the right to counsel this Court should clarify State's Attorney Due Diligence standard under Brady that applies equally to evidence that could have been used for impeachment purposes and further clarify counsel/petitioner has no burden to Scavenge for hints of undisclosed brady material even if the material part could be found in public records, or impeaching.

In (Brady v. Maryland) this Court adopted a set of prophylactic measures to protect a suspects fifth and fourteenth Amendment rights to "Due Process" of obtaining all documents and tangible objects. (Brady v. Maryland rule applies equally to evidence that could have been used for impeachment purposes. A defendant has no burden to scavenge for hints of undisclosed Brady material even if

the material part could be found in public records, rather prosecution's duty to disclose under Brady is absolute it does not depend on defense Counsel's actions, and defense is entitled to presume that Prosecutors have discharge their official duties. Whereas in this present case State Attorney stating several times to the defense, Judge, and Jurors at trial it's main witness was not obtaining any benefit for his trial testimony in further allowing it's main witness to testify he was not obtaining any benefit for his trial testimony. However (2) months after the Petitioner trial file a substantial assistance motion with an entirely different judge then the one who presided over the actual trial for it's main witness to have his prison sentence reduced specifically for his trial testimony in helping to convict the Petitioner. The granting of such substantial assistance motion being suppressed and never disclose to the defense/petitioner. This is transparent evidence demonstrating not only did State's Attorney and it's main witness commit perjury and/or fraud on the Court but the undisclosed substantial assistance motion was new and suppressed evidence that was favorable to the defense to use for impeachment purposes. State's Attorney failure to disclose such material evidence violated Petitioner constitutional right of the 5th and 14th Amendment. And such Due Process violation resulted in the indictment, Trial, and appeal proceedings being fundamentally unfair. The Third Circuit Court of Appeals did not disturb the Trial Court findings that this colorable Brady violation claim was procedurally bar for review do to not raising it on direct

appeal or 1st Rule 61 Postconviction motion. the decision by the 3rd Circuit Court of Appeals is plainly incorrect, as it both contradicts the bright-line holding of Brady and other cases in it's 3rd Circuit Court of Appeals. *See* (Bracey v. Superintendent Rockview, SCI, 986 F. 3d 274 (3rd Cir. 2021) (Workman v. Superintendent Albion, SCI, 915 F.3d 928 (3rd Cir. 2019)) and (Dennis v. Sec'y, Pa. Dep't of Corr, 834 F.3d 263 (3rd Cir. 2016) see also (Kyles v. Whitley, 514 U.S 419 (1995)).

State's Attorney failing to disclose it's main witness substantial assistance motion to the Petitioner violated Delaware Rule 16 Discovery in inspection and Brady rules. Petitioner was wrongfully denied his absolute right to use such suppress favorable evidence for impeachment purposes to demonstrate to jurors State Attorney main witness motive to lie. Petitioner concedes to express this suppress material evidence withheld by the State's Attorney was a plea tacit agreement that presented Fraud on the Court and violated Petitioner constitutional rights. Furthermore if jurors would have had the opportunity to review such suppress material evidence it would have undermine the confidence in the verdict. Moresaid State's Attorney suppression of favorable impeachment evidence not only is a constitutional violation of Petitioner 5th and 14th Amendment right it shows an on it's face violation of (Kyle v. Whitley) and (Brady v. Maryland) rules. Trial Court and the 3rd Circuit Court of Appeals decision to again procedural bar this Brady violation claim for review was erroneous and render the indictment, trial, and appeal

proceedings fundamentally unfair whereas caused an “miscarriage of justice.” This case presents this Court with an opportunity to clarify the Brady initiation standard in the face of Trial Court and State’s Attorney actions that violate Due Process to the Brady rules. “Absent Intervention” by this Court Delaware Trial Courts and 3rd Circuit Court of Appeals publish decision will work to undermine the carefully-crafted procedural safeguards that this Court has spent the past (50) years developing.

CONCLUSION

For the foregoing reason's Petitioner Mr. Washington respectfully request that this Court issue a Writ of Certiorari to review the judgment of the Trial Court and 3rd Circuit Court of Appeals erroneous decision that wrongfully procedurally bar a colorable claim of a Brady violation and/or constitutional violation of the Petitioner 5th and 14th Amendment rights. Conflicting Judges and Delaware State's Attorney's theories violates Due Process of law. Trial Court and 3rd Circuit Court of Appeals contradictory stances is fundamentally unfair and cause a miscarriage of justice. Whereas for the above reason's Petitioner request a reset on the Trial Proceedings or Dismiss the entire case in order immediate release.

Respectfully submitted,

Dated: JUNE 13TH 2024

SB# 4426/D 
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