Liberally Construed;

No. 24-5239

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
JUL 29 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOHN C. COLEMAN — PETITIONER
(Your Name)

vs.

WARDEN MICHAEL SWARTZ Toledo Corr. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS 6th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN C. COLEMAN
(Your Name)

2001 E. Central Ave
(Address)

Toledo, Oh 43608
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) Why was COLEMAN denied equal protection of law?

2) Was there a fundamental defect in COLEMAN's Case which inherently resulted in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands of fair procedure?

3) Did COLEMAN's trial constitute a denial of fundamental fairness?

4) Was COLEMAN convicted of crimes in a trial so unfair that it could not be called "due process" of law?

5) Was COLEMAN's trial and appeal counsel's deficient performance the "cause" for his claims not properly being presented in the State courts resulting "prejudice", which lead to the claimed procedural defaults?

6) Was the destruction of exculpatory evidence and the withheld impeaching evidence by the State considered a "Brady Violation" in COLEMAN's case?

7) Was COLEMAN's right to a speedy trial violated?

8) Was there sufficient evidence supporting COLEMAN's Conviction?

9) Was there a Brady Violation in COLEMAN's case?

10) Why wasn't COLEMAN's Actual Innocence/Miscarriage of Justice Claim was not considered by the District and Appeals Court?

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

Martinez v. Ryan, 566 U.S. 1 (2012)
Edwards v. Carpenter, 529 U.S. 446 (2000)
Trevino v. Thaler, 569 U.S. 413 (2013)
Coleman v. Thompson, 501 U.S. 722 (1991)
Massaro v. United States, 538 U.S. 500 (2003)
Holland v. Florida, 560 U.S. 631 (2010)
Klopfer v. North Carolina, 386 U.S. 213 (1967)
Smith v. Hooey, 393 U.S. 374 (1969)
Barker v. Wingo, 407 U.S. 514 (1972)
Dickey v. Florida, 398 U.S. 30 (1970)
Jackson v. Virginia, 443 U.S. 307 (1979)
Thompson v. Louisville, 362 U.S. 199 (1960)
In re Winship, 397 U.S. 358 (1970)
Washington v. Strickland, 693 F.2d 1243 (1982)
McMann v. Richardson, 397 U.S. 759 (1970)

Brady v. Maryland, 373 U.S. 83 (1963)
United States v. Agurs, 427 U.S. 97 (1976)
United States v. Bagley, 473 U.S. 667 (1985)
Kyles v. Whitley, 514 U.S. 419 (1995)
Murray v. Carrier, 477 U.S. 478 (1986)
Banks v. Dretke, 540 U.S. 668 (2004)
Strickler v. Greene, 527 U.S. 263 (1999)
Schlup v. Delo, 513 U.S. 298 (1995)

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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 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 United States district 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.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits 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.

The opinion of the ______ court 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.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 15, 2024.

[ ] 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 4, 2020. A copy of that decision appears at Appendix C.

[ ] 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

Judges, Discretionary Powers

Martinez v. Ryan decided that, in the exercise of the United Supreme Court's equitable judgment and discretion, it was appropriate to modify the rules for when a prisoner may establish cause to excuse a procedural default. Such exceptions to procedural default are judge-made rules that the Court may modify only when necessary.

5 USCS § 706, Scope of Review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

5 USCS § 706, Scope of Review

"Section 706 instructs that "[t]he reviewing court shall.... hold unlawful and set aside agency action, findings, and conclusions found to be", among other things, "arbitrary", "capricious, contrary to constitutional right, "in excess of" statutory authority, or "unsupported by substantial evidence". § 706 (2). The Statute tells judges to resolve the cases that come to them without regard to deficient agency action, findings, or conclusions - an instruction entirely consistent with the usual "negative power" of courts "to disregard" that which is unlawful.

Considerations Governing Review, State Court Decisions

When a federal district court reviews a state prisoner's habeas corpus petition pursuant to 28 U.S.C.S § 2254, it must decide whether the petitioner is in custody in violation of the Constitution or laws or treaties of the United States. The Court does not review a judgment, but the lawfulness of the petitioner's custody simpliciter.

Exceptions to Default, Cause & Prejudice Standard

In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.

Exceptions to Default, Cause and Prejudice Standard

"Cause" under the cause and prejudice test must be something external to the petitioner, something that cannot fairly be attributed to him. The existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objectives factor external to the defense impeded counsel's efforts to comply with the state's procedural rule.

Exceptions to Default, Cause and Prejudice Standard

Attorney error that constitutes ineffective assistance of counsel is "cause".

Actual Innocence and Miscarriage of Justice, Miscarriage of Justice

The cause and prejudice standard provide adequate protection to victims of a fundamental miscarriage of justice. In appropriate cases, however, the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

Actual Innocence and Miscarriage of Justice, Miscarriage of Justice

To ensure that the fundamental miscarriage of justice exception remains "rare" and only applies in the "extraordinary case", while at the same time ensuring that the exception extends relief to those who really truly deserving, the miscarriage of justice exception is tied explicitly to the petitioner's innocence. A prisoner retains an overriding interest in obtaining his release from custody if he is innocent of the charge for which he was incarcerated. In an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default.

Actual Innocence and Miscarriage of Justice, Miscarriage of Justice

The Carrier standard is intended to focus the inquiry on actual innocence. In assessing the adequacy of petitioner's showing, therefore, the district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on actual innocence allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial. With respect to that aspect of the Carrier standard, the habeas court must make its determination concerning the petitioner's innocence in light of all the evidence, including that alleged to have been illegally admitted, but with due regard to any unreliability of it, and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial.

Criminal Process, Assistance of Counsel

The 6th Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.

Effective Assistance of Counsel, Test for Ineffective of Counsel

The benchmark for judging any claim of ineffective of counsel must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

Effective Assistance of Counsel, Test for Ineffective Assistance of Counsel

Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. Accordingly, any deficiencies in counsel's performance must be prejudice to the defense in order to constitute ineffective assistance under the United States Constitution.

Cognizable Issues, Ineffective Assistance of Counsel

An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default, for if the attorney appointed by the State to purse the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claim.

Criminal Process, Assistance of Counsel

Lack of counsel on collateral review might excuse defendant's State law procedural default. A procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the State's initial-review collateral proceeding, there was no counsel or counsel in the proceeding was ineffective.

Criminal Process, Speedy Trial

The right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment.

Criminal Process, Speedy Trial

The right to a speedy trial guaranteed the accused by U.S. Const. amend. VI is "fundamental" and is imposed by the Due Process Clause of the U.S. Const. amend. XIV on the State.

Criminal Process, Speedy Trial

Any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case. The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant.

Speedy Trial, Constitutional Right

The nature of the speedy trial right does make it impossible to pinpoint a precise time in the process when the right must be asserted or waived, but that fact does not argue for placing the burden of protecting the right solely on defendants. A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

Speedy Trial, Constitutional Right

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. Courts can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. There are four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

Fundamental Rights, Procedural Due Process

The Due Process Clause of the Fourteenth Amendment protected a criminal defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. A state prisoner who alleged the evidence could not be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt stated a constitutional claim cognizable in a federal habeas proceeding.

Burdens of Proof, Prosecution

The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt.

Fundamental Rights, Procedural Due Process

It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process. These standards no more than reflect a broader premise that has never been doubted in our constitutional system: that a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend. A meaningful opportunity to defend, if not the right to a trial itself, presumes as well that a total want of evidence to support a charge will conclude the case in favor of the accused. Accordingly, a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm. The "no evidence" doctrine thus secures to an accused to most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty.

Reversible Error, Jury Instructions

The Winship doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental a substantive constitutional standards must also require that the fact-finder will rationally apply that standard to the facts in evidence. A "reasonable doubt," at a minimum, is one based upon "reason". Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a jury. Such occurrence has traditionally been deemed to require reversal of the conviction. Under Winship, which established proof beyond a reasonable doubt as an essential of Fourteenth Amendment due process, it follows that when such a conviction occurs in a state trial, it cannot constitutionally stand.

Appeals, Standards of Review

A federal court has a duty to assess the historic facts when it is called upon to apply a constitutional standard to a conviction obtained in a state court.

Review, Standard of Review

The critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. This inquiry does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Appeals, Standards of Review

A mere modicum of evidence may satisfy a "no evidence" standard. Any evidence that is relevant -- that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence -- could be deemed a "mere modicum." But it could not seriously be argued that such a "modicum" of evidence could by itself rationally support a conviction beyond a reasonable doubt.

Independent and Adequate State Grounds, Adequate and Independent Principle

Under 28 U.S.C.S. § 2254, a federal court must entertain a claim by a state prisoner that he or she is being held in custody in violation of the Constitution or laws or treaties of the United States. A state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim.

Jurisdiction, Cognizable Issues

In a challenge to a state criminal conviction brought under 28 U.S.C.S. § 2254, the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. The standard must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law.

Discovery and Inspection, Brady Materials

The suppression of evidence favorable to an accused is itself sufficient to amount to a denial of due process.

Brady Materials, Brady Claims

The suppression by the prosecution of evidence favorable to an accused upon request, violation of due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

STATEMENT OF THE CASE

On August 9, 2017; detective Russell A. Bassett for the Akron Police Department made a sworn affidavit stating COLEMAN was caught on camera breaking into the front north side door of a Nicole Matthew's home and removed two T.V.s. A warrant was issued for COLEMAN's arrest behind detective Bassett's statements in his sworn affidavit. See Appendix F Exhibit 1, Appx. G Exh. 5.

On September 25, 2017; a lady named Tanisha Bowen made a police report stating that when she pulled into her driveway she saw someone behind her house; but once they came into eye contact the person ran. Ms. Bowen also stated that she did not see the person's face; but the description she gave was a "skinny black male". Ms. Bowen reported that her back window was broken out and her home doors were opened; but that nothing was missing from her home. A speck of blood was taken from the outside windowframe and sent to the B.C.I.. See Appx. F Exh. 2.

On October 24, 2017; the B.C.I. test result for the speck of blood found on the outside windowframe came back "unknown" after being ran in a database system that COLEMAN's DNA profile has been in at the time. See Appx. H Exh. 4

On November 23, 2017; Ms. Bowen and her son's father went down to the Akron Police Station and made another statement stating that an ash tray and a cell phone were missing from her home the night she made the first report stating nothing was missing. See Appx. H Exh. 12

On November 24, 2017; the very next day after Ms. Bowen and her son's father made the second statement; detective Tanisha Stewart for the Akron Police Department made a sworn affidavit stating COLEMAN committed several acts of Burglary and that he took an ashtray and cellphone from inside Ms. Bowen's home, and that he was identified by his DNA profile. A warrant was issued for COLEMAN's arrest behind detective Stewart's sworn affidavit. See Appx. F Exh. 2, Appx. H Exh. 7

On January 26, 2018; COLEMAN was arrested and held in the Summit County Jail.

On January 27, 2018; COLEMAN received two seperate complaints stating he was being charged on two counts of felony (2) Burglary.

On January 29, 2018; COLEMAN was transported from the Summit County Jail to the Akron Police Station where detective Stewart and another detective forcefully took his DNA by swab and sent it to the B.C.I.. See Appx. F Exh. 5, Appx. H Exh. 8, 9, 13

On February 14, 2018; COLEMAN was indicted by the grand jury on both counts of Burglary before the return of the B.C.I. results from the swab forcefully taken on January 29, 2018; which supported the State's accusations making COLEMAN the suspect in count two Burglary and behind three edited video clips supporting count One Burglary charge. See Appx. F Exh. 6-7, Appx. H Exh. 10

On March 14, 2018; a month after COLEMAN had already been indicted on count two Burglary; the B.C.I. results came back for the one swab forcefully taken by the two detectives stating that COLEMAN'S DNA matched the DNA found on the crime scene. See Appx. F Exh. 8, Appx. H Exh. 11

On April 11, 2018; COLEMAN requested for a bond modification, the trial court modified COLEMAN'S bond from a $100,000.00 10% to $75,000.00 10%, See Case No. 2018-01-0287 Journal Entry date: 4-11-18, Appx. D Exh.

On May 9, 2018; COLEMAN'S trial counsel requested a trial date, The trial court set trial for July 30, 2018. See Case No. 2018-01-0287 Journal Entry date: 5-9-18, Appx. D Exh.

On May 23, 2018; the State requested a continuance of trial til August 20, 2018; COLEMAN did not consent. The trial Court vacated trial set for July 30, 2018; and set trial for

August 20, 2018. See Case No. 2018-01-0287 Journal Entry date: 5-23-18, Appx. D Exh.

On August 20, 2018; the trial court vacated trial and set a Motion to Dismiss hearing for August 23, 2018; behind an improper motion underlined under three different case numbers then the two Burglary Cases. See Case No. 2018-01-0287 dates: 8-16-18 & 8-20-18, Appx. D Exh.

On August 23, 2018; the trial court held a Motion to Dismiss hearing behind the improper motion; which it denied and COLEMAN requested that his trial counsel withdraw from his case due to him being ineffective. See Case No. 2018-01-0287 dates: 8-23-18, Appx. D Exh.

On August 29, 2018; COLEMAN was appointed new counsel. See Case No. 2018-01-0287 date: 8-29-18, Exh.

On September 26, 2018; COLEMAN filed a motion to suppress the evidence. See Case No. 2018-01-0287 date: 9-26-18, Appx. G Exh. 8

On October 3, 2018; the trial court set a suppression hearing for November 2, 2018. See Case No. 2018-01-0287 date: 10-3-18, Appx. D Exh.

On November 2, 2018; COLEMAN's appointed trial counsel withdrew COLEMAN's motion to suppress the evidence and the trial court moved to set trial for January 30, 2019; which COLEMAN opposed; So then trial was re-set for January 24, 2019; which COLEMAN opposed but was ignored by the court. See Case No. 2018-01-0287 date: 11-2-18, Appx. D Exh.

On November 28, 2018; COLEMAN waived his right to counsel. A hearing was set for December 21, 2018. See Case No. 2018-01-0287 date: Nov. 28, 2018, Appx. D Exh.

On December 21, 2018; COLEMAN waived his right to counsel, requested discovery, an expert witness to test evidence. COLEMAN also requested another bond modification; which the trial court denied. The trial court also vacated trial set for January 24, 2019; COLEMAN did not consent. See Case No. 2018-01-0287 date: 12-21-18, Appx. D Exh.

On January 9, 2019; a new judge was on the bench. COLEMAN requested that his standby counsel represent his case in hope of a fair trial. See Case No. 2018-01-0287 date: 1-9-19, Appx. D Exh.

On January 23, 2019; COLEMAN's new trial counsel entered an oral motion to dismiss on the grounds his speedy trial time had expired. The trial judge instructed COLEMAN's trial counsel and the State to get together to see what they could come up with. A status hearing was set for February 6, 2019. See Case No. 2018-01-0287, date 1-23-19, Appx. D Exh.

On February 6, 2019; COLEMAN's trial counsel orally argued that COLEMAN's speedy trial had expired; which the State rebuttled. The trial judge stated on the record that she wasn't going to rule on it, that it was an appeal issue. Trial was set for February 20, 2019; COLEMAN requested for the Return of Tangible Evidence, requesting for the original video evidence, See Case No. 2018-01-0287 date 2-6-19, Appx. D Exh.

On February 7, 2019; the trial court vacated the trial date for February 20, 2019; stating it was a mix up. COLEMAN requested for an expert witness and the Return of tangible evidence, requesting to see the original video evidence. The trial court ordered the State to produce the video evidence. A status hearing was set for february 19, 2019; with a trial date set for February 28, 2019. See Case No. 2018-01-0287 date: 2-7-19, Appx. D Exh., Appx. G Exh 10

On February 19, 2019; the State requested a continuance of trial set for February 28, 2019; til March 5, 2019. The video evidence the court ordered the State to produce was never presented by the State. The court order COLEMAN's trial counsel to bring a laptop to the county jail to go over the video evidence with COLEMAN. See Case No. 2018-01-0287, Appx. D Exh.

On March 5, 2019; trial started without COLEMAN ever reviewing the video evidence. COLEMAN's trial counsel allowed for three edited video clips to be used during trial and an illegal DNA test result. The speedy trial violation was never brought up, the State used illegal evidence to ~~COLEMAN~~ convict COLEMAN. There was no evidence supporting the juries guilty verdict, the original video had been destroyed which was excalpatory evidence, evidence the State claimed was material either to guilt or to punishment. All the evidence the State used went against the Rules of Evidence, it was illegal, inadmissible. The members of the jury found COLEMAN guilty behind facts not on the record.

The trial court sentenced COLEMAN to eight years to serve in prison.

COLEMAN's appeal counsel failed to comply with Ohio Rule of Appellate Procedure 16(A)(7), by not presenting his speedy trial claim to the State appeal court properly, by stating reasons in support of his contentions that COLEMAN's Constitutional right to a speedy trial was violated, with citations to the authorities, statutes, and parts of the record which he relied on to support his argument. The record contained the necessary substantiating information concerning the "Insufficient Evidence", "Ineffective Assistance of Trial Counsel", and Brady Violation claims for COLEMAN's appellate counsel to had adequately present the claims on COLEMAN's direct appeal; which he failed to do. COLEMAN's appellate counsel's deficient performance "prejudice" COLEMAN and was the "cause" for the claimed procedural defaults; which COLEMAN explained to both District and Appeal Court, but still was denied federal review.

REASONS FOR GRANTING THE PETITION

As Coleman recognized : An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default, for if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claims. See Coleman v. Thompson, 501 U.S. 722; Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed. 2d 821 (1985). COLEMAN was represented by counsel during his direct appeal. COLEMAN constantly attempted to contact his appellate counsel before the filing of his appeal brief; but was denied. COLEMAN's appellate counsel had fully control over the filing of his appeal brief. Neither the United States Constitution, the Ohio Constitution nor case law mandates *** hybrid representation. See McKaskle v. Wiggins (1984), 465 U.S. 168 [104 S.Ct. 944, 79 L.Ed. 2d 122.

COLEMAN's appellate counsel's deficient performance is the "Cause" for the claimed procedural defaults and the actual or constructive denial of effective assistance of counsel altogether legally resulted "prejudice". Through several declarations and affidavits and exhibits COLEMAN showed "cause" and "prejudice" to the District and Appeal court to have excused any procedural default defenses.

The Sixth Amendment to the U.S. Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. There's a guarantee protection for the accused from arrest or indictment through trial.

Prior to conviction, the accused is shielded by the presumption of innocence, the "bedrock[,] axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." Reed v. Ross, 468 U.S. 1, 4, 104 S.Ct. 2901, 82 L.Ed. 2d 1 (1984).

The Speedy Trial Clause implements that presumption by "prevent[ing] undue and oppressive incarceration prior to trial... minimiz[ing] anxiety and concern accompanying public accusation [,] and... limit[ing] the possibilities that long delay will impair the ability of an accused to defend himself. Barker v. Wingo, 407 U.S. 514, 532-533, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972).

The Due Process Clause is a safeguard against fundamentally unfair prosecutorial conduct. United States v. Lovasco, 431 U.S. 783, 789, 97 S.Ct. 2044, 52 L.Ed. 2d 752 (1977). Due Process Clause may be violated, for instance, by prosecutorial delay that is "tactical" or "reckless".

The literal sweep of U.S. Const. amend. VI is qualified by specifically recognizing the relevance of four separate inquiries: whether delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's result. Barker, supra, at 530.

COLEMAN was arrested on January 26, 2018; and placed in the Summit County Jail.

On February 14, 2018; COLEMAN was indicted on both Counts of Burglary.

On February 21, 2018; COLEMAN was given a $100,000.00 bond.

On April 11, 2018; COLEMAN requested a bond modification, the trial court modified his bond from $100,000.00 to $75,000.00. "A request for bail or a reduction in bail is an assertion of the right to a speedy trial." Maples v. Stegall, 427 F.3d 1020 (6th Cir. 2005).

On May 9, 2018; the trial court set trial for July 30, 2018; COLEMAN requested for another bond modification; but was denied.

On May 23, 2018; the State requested a continuance of trial set for July 30, 2018 til August 20, 2018. The trial court vacated trial set for July 30, 2018; and set trial for August 20, 2018; COLEMAN did not consent. "A defendant has no duty to bring himself to trial; the State has that duty..." United States v. Ingram, 446 F.3d 1332, 1337 (6th Cir. 2006) (quoting Barker, 407 U.S. at 527).

On August 20, 2018; trial was vacated behind an improper motion filed by COLEMAN himself while still being represented by counsel. The improper motion was filed under three separate case numbers then the 2018-01-0287 Burglary cases; but the trial court vacated trial behind the improper motion filed by COLEMAN. A motion to dismiss hearing was set for August 23, 2018; behind the improper motion. "Neither the United States Constitution, the Ohio Constitution nor case law mandates *** hybrid representation". McKaskle v. Wiggins (1984), 465 U.S. 168; but the trial court vacated trial and set a hearing behind an improper motion filed by COLEMAN while still being represented by counsel.

On August 23, 2018; a hearing was held on the improper motion filed by COLEMAN, where his trial counsel said he had nothing to say concerning the matter; the trial court denied the improper motion to dismiss. COLEMAN requested that his appointed counsel withdraw from the case for being ineffective. New counsel was appointed the same day.

On November 2, 2018; the trial court set trial for January 30, 2019; which COLEMAN opposed; so the trial court re-set the trial date for January 24, 2019; which COLEMAN opposed; but was Ignored. The court's attempt to set trial pass January 24, 2019; when the date was available, proved the State trial court used the long delays ~~for trial~~ as a tactical advantage against COLEMAN. "Governmental delays motivated by bad faith, harassment or attempts to seek a tactical advantage weigh heavily against the government." United States v. Schreane, 331 F.3d 548.

On December 21, 2018; the trial court vacated the trial date set for January 24, 2018; COLEMAN did not consent.

On January 23, 2019; COLEMAN's trial counsel entered an oral motion to dismiss concerning speedy trial violation, requesting transcripts to support a prima facie for discharge. A two week Continuance was entered.

On February 6, 2019; COLEMAN's trial counsel orally argued to the court that COLEMAN's speedy trial right had been violated. The trial judge stated on the record that she wasn't going to rule on it because it was an appeal issue and that the case wasn't going to be dismissed behind a technicality. The trial court set trial for February 20, 2019.

On February 7, 2019; the trial court vacated the trial date set for February 20, 2019; and re-set trial for February 28, 2019.

On February 19, 2019; the State requested another Continuance of trial set for February 28, 2019. The trial Court vacated the trial date set for February 28, 2019; and set trial for March 5, 2019.

On March 5, 2019; 403 days after COLEMAN's arrest, trial finally Started. "A one-year delay is presumptively Prejudicial and triggers analysis of the remaining Barker factors." Doggett v. United States, 505 U.S. 647, Maples 421 F.3d at 1026.

The State and trial court vacated trial (4) times throughout the proceedings. Trial did not start until 403 days after COLEMAN's arrest; the entire time COLEMAN was held in jail unable to gain witnesses, evidence was lost, and he experienced stress and anxiety; which destroyed his defense. "The 14th Amendment applying the 6th Amendment right to a speedy trial is enforceable against the States as one of the most basic rights preserved by the United States Constitution". COLEMAN's conviction must be vacated; because his rights to a speedy trial under the 6th and 14th Amendment to the United States Constitution was violated.

It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process. Cole v. Arkansas, 333 U.S. 196, 201; Presnell v. Georgia, 439 U.S. 14. These standards no more than reflect a broader premise that has never been doubted in our constitutional system: that a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend. Hovey v. Elliott, 167 U.S. 409, 416-420. Cf. Boddie v. Connecticut, 401 U.S. 371, 377-379. A meaningful opportunity to defend, if not the right to a trial itself, presumes as well that a total want of evidence to support a charge will conclude the case in favor of the accused. In Thompson v. Louisville the court held that a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm. See also Vachon v. New Hampshire, 414 U.S. 478; Adderley v. Florida, 385 U.S. 39; Gregory v. Chicago, 394 U.S. 111; Douglas v. Buder, 412 U.S. 430. The "no evidence" of Thompson v. Louisville thus secures to an accused the most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty.

To legally convict on Burglary Felony of the Second Degree in Ohio, the State was required to prove beyond a reasonable doubt that COLEMAN, by force, stealth, or deception, trespass in an occupied structure, with purpose to commit in the habitation any criminal offense. "The Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358 (1970).

There was "no evidence" supporting the States allegations that COLEMAN, by force, stealth, or deception, trespass in an occupied structure, with purpose to commit in neither habitation any criminal offense.

During trial the State used three edited video clips and a DNA test result; which resulted from a swab forcefully taken from COLEMAN illegally, "fruit of the poisonous tree", to prove COLEMAN committed Burglary. The evidence used by the State violated the Rules of Evidence, and by law was inadmissible. "No man is to be convicted on unconstitutional evidence." Rochin v. California, 342 U.S. 165, 173 (1952), Mapp v. Ohio, 367 U.S. 643 (1961). While on the stand, the State's witness Det. Bassett testified that the original video had been destroyed that supported the State's accusations COLEMAN, by force, trespassed in the occupied structure, and committed a criminal offense in the habitation. There was "no evidence" proving that a Burglary occurred in Count one. In count two Burglary, the State used a DNA test result illegally taken from COLEMAN and compared to some DNA allegedly found on an outside windowsill of the home. There was "no evidence" supporting the state's accusations COLEMAN, by force, trespassed in the occupied structure, and committed a criminal offense in the habitation. The members of the jury found COLEMAN guilt behind facts not on the record. "A state prisoner who alleged the evidence could not be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt stated a Constitutional claim cognizable in a federal habeas proceeding." Jackson v. Virginia, 443 U.S. 307 (1979).

The Due Process Clause of the Fourteenth Amendment protects a criminal defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. There is "no evidence" supporting neither Burglary Conviction, COLEMAN's sentence must be vacated.

A person accused of a federal or state crime has the right to have counsel appointed if retained counsel cannot be obtained. See Argersinger v. Hamlin, 407 U.S. 25 (1972); Gideon v. Wainwright, 372 U.S. 335 (1963), Johnson v. Zerbst, 304 U.S. 458. That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. Washington v. Strickland, 693 F.2d 1243 (1982).

For that reason, the Court has recognized that "the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970).

" [The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty"... The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done. Johnson v. Zerbst, 304 U.S. 458, 462 (1938). To the same effect, See Avery v. Alabama, 308 U.S. 444 (1940), and Smith v. O'Grady, 312 U.S. 329 (1941).

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determing for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know to establish his innocence. Powell v. Alabama, 287 U.S. 45 (1932).

On February 21, 2018; COLEMAN's trial counsel was ineffective for not objecting the indictment when there wasn't any evidence supporting the elements of Burglary.

On August 20, 2018; COLEMAN's trial counsel refused to defend COLEMAN's rights to a speedy trial.

On November 2, 2018; COLEMAN's counsel withdrew his suppression hearing, failing to object the State's evidence.

On February 6, 2019; COLEMAN's trial counsel failed to prepare a prima facie for discharge, to properly argue COLEMAN's speedy trial right had been violated.

On February 19, 2019; COLEMAN's trial counsel failed to object the State's request for another continuance of trial, failed to enter a motion to dismiss for a lack of speedy trial.

On March 5, 2019; trial started, COLEMAN's trial counsel failed to enter a motion to dismiss concerning COLEMAN's speedy trial right being violated, COLEMAN's trial counsel allowed three edited video clips, an illegal DNA test result, and a booking photo to be used during trial.

During COLEMAN's appeal, his counsel failed to submit transcripts to the court supporting his argument that COLEMAN's Constitutional right to a speedy trial had been violated, he failed to follow Ohio R. App. P. 16(A)(7) by not applying his contentions, with citations to the authorities, statutes, and parts of the record on which he relied concerning COLEMAN's Constitutional right to a speedy trial had been violated. Although the record contained the necessary substantiating information concerning the claims "Insufficient Evidence", "Ineffective Assistance of Trial Counsel", and "Brady Violation". COLEMAN'S appellate counsel failed to raise the obvious errors; which the District and Appeal court used to deny COLEMAN federal review, claiming he procedurally defaulted his claims that his counsels had full control over to raise; but failed.

COLEMAN'S counsel's deficient performance is the cause for COLEMAN'S wrongful conviction, and the reason he's still in prison; which prejudiced COLEMAN. The ineffectiveness of counsel resulted in actual and substantial disadvantage to the course of COLEMAN'S defense.

COLEMAN'S case is necessary to remand to the district court to determine whether COLEMAN'S right to effective assistance of counsel was violated. If the district court finds a violation, it should then determine whether the petitioner suffered actual and substantial detriment to the conduct of his defense. Once COLEMAN meets this twin burden, the district court should determine whether, in the context of the entire case, the detriment suffered was harmless beyond a reasonable doubt. See Pullman-Standard v. Swint, 456 U.S. at —, 102 S.Ct. at 1791-92, Washington v. Strickland, 693 F.2d 1243 (1982), The prosecution's affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th-century strictures against misrepresentation and is of course most prominently associated with this Court's decision in Brady v. Maryland, 373 U.S. 83 (1963). See id., at 86 (relying on Mooney v. Holohan, 294 U.S. 103 (1935), and Pyle v. Kansas, 317 U.S. 213, 215-216, 87 L.Ed. 214, 63 S.Ct. 177 (1942)). Brady held "that the suppression by the prosecutor of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. at 87; see Moore v. Illinois, 408 U.S. 786, 794-795, 33 L.Ed. 2d 706, 92 S.Ct. 2562. There is no difference between exculpatory and impeachment evidence for Brady purposes, and there is no longer a distinction between the "specific-request" and general-or no-request" situations. Regard less of request, favorable evidence is material, and Constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. United States v. Bagley, 473 U.S. 667 (1985).

The district and Appeals Court ruled in its Order that COLEMAN argued that the prosecutor withheld an edited portion of a surveillance video; But the prosecutor possessed only the edit portion of the video played at trial; which was incorrect. The argument COLEMAN presented to the Courts was that the State allowed for the original video to be destroyed while once in their possession and that the original video was exculpatory evidence which proved COLEMAN did not Commit the crime. The destruction of the original video that the Akron Police claimed they personally saw and made sworn affidavit concerning and that the prosecution knew was missing; but pursued the charges and never informed the defense, even after COLEMAN constantly requested to see the original video evidence is, in fact, a Brady Violation. The State denied COLEMAN and the members of the jury the right to see the evidence supporting guilt and punishment. The State claimed the video showed the acts of Burglary being committed, but never produced it to the defense. Reasonable jurists would find the District and Appeals Court's decision wrong.

The District and Appeals Court stated in its Order concerning COLEMAN's second Brady Violation that COLEMAN complained that a witness provided the police with to conflicting statements; which was not COLEMAN's argument supporting his Brady Claim in Count two Burglary. COLEMAN's argument was that the State withheld statements from the defense, the Court, and the jury on how he became a suspect in count two Burglary; which was a Brady Violation. There was a statement made by the alleged victim's son's father that the State withheld when questioned by members of the jury "How COLEMAN became a suspect?". The State stated that COLEMAN became a suspect through a CODIS hit before the return of the March 14, 2018; B.C.I. test result; which the State stated on record to the Court. See

The Statement the State withheld was impeaching evidence which COLEMAN could've used in his defense had he known it then existed. The Distrit and Appeals Court claimed in its order that COLEMAN had not shown the suppression of evidence and therefore could not overcome the procedural default. Any reasonable jurists would find the District and Appeals Court's decision wrong and debatable. "[C]ause and prejudice" in this case "parallel two of the three components of the alleged Brady violation itself," Stickler v. Greene, 527 U.S. 263, to excuse procedural default.

COLEMAN's Brady Claim deserves federal review. Not to hear COLEMAN's Claims would be a miscarriage of justice. The record is devoid of evidence that COLEMAN, by force, trespassed in either residence, and committed an offense therein either habitation. The jury entered a guilty verdict behind facts not on the record.

CONCLUSION

COLEMAN's 6th Amend. right to a speedy trial was violated, his 14th Amend right to sufficiency of evidence was violated, his 6th Amend right to effective assistance of counsel was violated, and there was a Brady violation in his case in violation of the 14th Amend. to the U.S. Constitution. His conviction can not constitutionally stand, his imprisonment is unjustified.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 7-26-24