

No.

24 - 5279

FILED  
FEB 16 2024  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

Chatha M. Tatum — PETITIONER  
(Your Name)

vs.  
Tommy Williams — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth Circuit Court of Appeal  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHATHA M. TATUM

(Your Name)

NA

(Address)

NA

(City, State, Zip Code)

NA

(Phone Number)

(QUESTION ONE)

Did District error in denying Petitioner Evidentiary Hearing to develop the facts validating his Const. claims: And thereafter committing compound error in denying defendant his right to a (COA) in which reasonable jurist would readily have agreed.

Petitioner has made prima facie showing that Petitioners claims of Const. errors impact the reliability of his state.

(QUESTION TWO)

Did the 10th Circuit Court of Appeals error in denying Petitioner his rights to a (COA) to proceed on his Const. claims in which reasonable jurist would readily have agreed.

Petitioner has made a prima facie showing that his claims of Const. errors impugn the reliability of his state convictions.

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( D )

## 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

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[ ] is unpublished.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[ ] is unpublished. unknown

[ ] 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[ ] is unpublished.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 Kansas court of Appeal 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 Oct 3, 2023.

[ ] No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec 1, 2023, and a copy of the order denying rehearing appears at Appendix E.

An extension of time to file the petition for a writ of certiorari was granted to and including May 12, 2024 (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 OCT 29, 2019. 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**

FIFTH AMENDMENT

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, nor shall private property be taken fo public use, without just compensation.

FOURTEENTH AMENDMENT

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States 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 abridge the privileges or immunities of citizens of the United States; nor shall any person within its jurisdiction deny the equal protection of the laws.

STATEMENT OF THE CASE

On July 13, 2004 a jury trial in the District Court of Wyandotte County Kansas convicted Chatha M. Tatum of One Count of First Degree Murder in violation of K.S.A.21-3401 and attempted First Degree Murder of K.S.A.21-3401 and on K.S.A.21-3301, Case No. 03-CR-2186.

On September 10, 2004 the Wyandotte County District Court entered judgment and sentenced Petitioner to a term of Life imprisonment without the possibility of parole for (50) yrs. (Hard 50) on Count One. With 195 months to run concurrently on Count Two.

This judgment and sentence was affirmed on June 9, 2006 by the Kansas Supreme Court, in which time Petitioner could have sought A Writ of Certiorari that expired on Sept. 7, 2006, and the conviction then became final.....

**SEE:** State v. Tatum 281 Kan 1098, 135 P.3d 1088 (2006)

On June 11, 2007 Petitioner filed a Post-Conviction under K.S.A.60-1507 to vacate and set aside the judgment of the conviction, along with a Supplemental Motion, Case No.07-CV-984.

On ~~May~~12, 2012 the District Court held an Evidentiary Hearing.

On June 17, 2013 the District Court entered a judgment denying the K.S.A. 60-1507. Case No. 07-CV-984

On July 17, 2015 the Kansas Court of Appeal entered judgment that affirmed the denial of Petitioners K.S.A. Motion 60-1507. **SEE:** Tatum v. State, 353 P.3d 470(2015) WL4486775 (Case No.110,299) Kan. Ct. App.2015 (unpublished opinion).

On Feb.18,2016 the Kansas Supreme Court entered judgment denying review.

On May 11, 2016 Petitioner filed a second Motion for Post-Conviction relief pursuant to K.S.A 60-1507 Case No. 16-CV-388.

On August 24,2016 the District Court summarily denied the Petitioners second K.S.A. 60-1507 on Case No.16CV-388.

On Sept.13,2016 Petitioner filed a motion to alter or amend judgment along with a Supplement Affidavit of Truth in support of habeas. Case No.16-CV-388

The District Court granted a Evidentiary Hearing on Sept. 21,2016. The State then submitted their response to Petitioners motion to Alter or Amend Judgment on Sept. 30,2016.

The District Court entered judgment "Order denying change

of prior order " No.16-CV-388.

On Oct.13,2016 Petitioner filed a Notice of Appeal to the Kansas Court of Appeal.

On Aug.24,2018 the Court of Appeals entered judgment and affirmed the denial of Petitioners second K.S.A. motion.

SEE: Tatum v. State, 423 P.3d 1065 (table)2018  
WL 4039222 (No.117,062) (unpublished opinion).

On Sept.27,2019 the Kansas Supreme Court entered judgment which denied review.

On Nov.1,2019 Petitioner placed his Habeas Corpus Relief application pursuant to USC§2254 in the prison mail system for filing in the United States District Court for the District of Kansas,(Doc.1)19-CV-03228

On Oct31,2022 the United States District for the District of Kansas entered a Memorandum and order which dismissed Petitioners Habeas Corpus without certificate of appealability being issued.

On Oct3,2023 the United States Court of Appeals for the 10th Circuit entered judgment denying certificate of appealability No.22-3280.

On DEcl,2023 the United States Court of Appeals for the 10th Circuit entered judgment denying rehearing.. Rehearing en banc No.22-3280.

(RELEVANT FACTS CONCERNING UNDERLYING CONVICTION)

II. The relevant facts are contained in Chatha M. Tatum's motion under 28USC§ 2254, (Doc.1)App. during Petitioners criminal trial in the District of Wyandotte COUNTY Court.

On July 8, 2004 the state subpoenaed Antonio Ford who was one of the exculpatory witnesses to the shooting of Damon Walls, his girlfriend Kyea Himbrough on Dec 17, 2003. (No.03-CR-2186)

On July 8, 2004 the state also subpoenaed Antonio Ford to testify at the Petitioners trial.

The District Court judge acknowledge that Mr. Ford had made his first appearance without counsel and appointed counsel, Gary Stone to advise Mr. Ford on his right to testify at the Petitioners trial.

After consulting with the prosecutor, Mr. Stone briefed the record that Mr. Ford is not purposively refusing to testify here today. But advised Mr. Ford to invoke the Fifth Amendment in light of Mr. Ford's felony murder charge. SEE: (No.03-CR-2186) trial transcripts Vol.II 308-312

On July 9, 2004 Petitioners trial Counsel presented oral motion to submit Mr. Ford's murder charges to the jury.

The state reiterated it's previous motion directing the defense counsel not to disclose Mr. Ford's murder charge.

The District Court denied the motion to present evidence to the jury that Mr. Ford was charged with Felony Murder. (No.03-CR-2186) (trial transcripts Vol.III 440-442)

**INEFFECTIVE ASSISTANCE OF COUNSEL**

On Sept. 6, 2016 Petitioner filed a (motion to Alter or Amend Judgment) with a (Supplemental support of Habeas Corpus) raising Ineffective Assistance of Counsel for failing to investigate, prosecutorial misconduct for failing to disclose Mr. Ford's charges, intimidating Mr. Ford into invoking his Fifth Amendment right to testify at Petitioners trial.

App. F . App. G .

On Sept. 30, 2016 the District Court entered a (Order denying change of prior order) which the prior order was an Evidentiary hearing and the District Court based it's denial on this is (new evidence that could have been presented in an earlier filing). (New evidence is not the absolute rule in this state).

App. H

On Oct.13,2016 Petitioner filed a Notice of Appeal to the Kansas Court of Appeals briefing the (prosecutorial misconduct claim) arguing the state intimidated Mr.Ford into invoking his Fifth Amendment right to testify at Petitioners trial,failing to disclose that Mr.Ford was charged with Felony Murder at Petitioners trial App. I . P. 14-18

The Court of Appeals in the second 60-1507 case argued that Petitioner was incorrect and on June 10,2004 the state filed an amended complaint charging Mr.Ford and Dwayne Coates with First Degree Murder App. D . P. 9-11 .

On Sept.3,2004 Mr.Ford entered guilty pleas to conspiracy to sell marijuana as well as attempted sell of marijuana in exchange for the dismissal of the First Degree murder charge. App. J . J .of the state brief in the Court of Appeal, the District Court, in disposing of Petitioners motion under section 2254, held that there is no showing here that the prosecutor somehow intimidated Mr.Ford One important point that needs addressing is that the Court of Appeals in the section 2254 appeal relied on the states exhibits App. J - K in their brief. Petitioners brief was not properly drafted to show the Court of Appeals that the state used the first amended complaint App. to intimidate Mr.Ford into invoking his Fifth Amendment right not to testify to his exculpatory statement in Petitioners trial.

There is newly discovered evidence in the record on appeal that will show Mr.Ford was never charged under the first amended complaint at any time and was not giving plea for pleading to lesser charges.

## UNREASONABLE DETERMINATION OF THE FACTS

This is an appeal from the Tenth Circuit Court of Appeals for a (COA).....

Did Petitioner make a substantial showing of the denial of a constitutional right under 28§ 2253(c)(2) to the Tenth Circuit of Appeal to have the merits of his case heard under; **Miller-el v. CoChrell**, 537 U.S.322,336,123 S.Ct.1029, 154LL.2d,2d 931(2003) Petitioner seeks a (COA) on two arguments;

(1). Prosecutorial misconduct in connection with the exculpatory statement of Mr.Ford as well as his trial counsel failing to investigate his alibi witnesses defense. App. B  
p. 48-53

(2). The prosecutorial misconduct argument is surely defaulted under the Kansas Supreme Court rule 183(d)(3), " A proceeding under K.S.A.60-1507 ordinary may not be used as a substitute for a second appeal. mere trial errors must be corrected by direct appeal, but trial errors affecting constitutional rights may be raised even though the error could have been raised on appeal provided exceptional circumstances excused the failure to appeal.

Petitioner was unable to show the Kansas Court of Appeal exceptionally to overcome his procedure default due to Petitioner relying on an unlicensed paralegal service for prisoners, which was actually fraud.

Petitioner became aware of this through a Victim Notification System from the U.S. Departmental of Justice App. L. The un licensed paralegal's name, Leslie Love, has submitted a affidavit App. M, for failing to follow the Supreme Court rule 6.02.

The state court rejected this claim for two reasons.

- 1). Petitioner was incorrect on Mr.Ford not being charged with Felony Murder and on Sept.3,2004 Mr.Ford entered guilty pleas to have his First Degree Murder charges dismissed, App. B p. 49.
- 2). Petitioner had procedurally defaulted his claim by failing to raise it on direct appeal as well as not establishing cause and prejudice to overcome that default which he did not present ineffective assistance to the state court as an independent claim before it may be used to establish

cause for a procedural default" of another constitutional claim. Carpenter, 529 U.S. at 451-52 (quoting Murray v. Carrier, 477 U.S. 478, 489. (1986)

The District Court denied Petitioners motion. It first explained he could not assert it as grounds to establish cause for the procedural default of his claim of prosecutorial mis-conduct.

Likewise, Petitioner cannot establish that mis-carriage of justice will occur if his claim is not considered.

To show a mis-carriage of justice Petitioner must show that an error asserted probably resulted in the conviction of an innocent person... Petitioner has not made this showing.

#### ARGUMENT FOR ALLOWANCE OF MERIT

II. The Court of Appeal errored in affirming the District Court denying of a (COA) because Petitioner did not show government coercion on a exculpatory witness involving his Fifth Amendment right to testify.

A state prisoner whose petitioner Writ of Habeas Corpus is denied by federal District Court does not enjoy an absolute right to appeal.

Federal law requires that he first obtain a (COA) from a circuit justice or judge, 28 USC§2253(c)(1).

A (COA) from a issue "only" if the applicant has made a substantial showing of the denial of a constitutional right. 28 USC§2253(c)(2). until the prisoner secures a (COA).

The Court of Appeal may not rule on the merits of his case. Miller-el v. Cochrell 537 U.S.322,336. 123 S.ct 1029,154 L.2d 2d 431 (2003)/

The Tenth Circuit finds that, after consideration of Petitioners combined opening brief and application for a (COA) and the record on appeal, the Tenth Circuit Court concluded that reasonable jurist could not debate whether Petitioners claims should have been resolved in a different manner or that the issue presented were adequate to deserve encouragement to proceed further, Slach v. McDaniel 529 U.S.473,120S.ct1595, 146 L.2d.2d 542(2000) App. A p. 3.

Also the court explained that the Petitioner had no showing of government coercion to prevent Mr. Ford's testimony and he made no showing that the alleged alibi witness could provide favorable testimony for substantially the same reasons given by the District Court in denying relief under U.S.C§ 2254, we deny Petitioners request for a (COA).

Here the District Court and the Tenth Circuit Court are relying on the state records that Mr. Ford was charged on June 10, 2004 with Felony Murder App. J and his murder charges were dropped per plea to lesser charges App. K. p. 3.

The reason for the record not being properly developed at the Court of Appeals stage was because the un-licensed paralegal, (Leslie Love) App. M. incompetency on preparing Petitioners brief and failing to direct the Court of Appeals to record on appeal. This would have shown both trial counsel's, post-conviction counsel were on record confirming that Mr. Ford was charged with First Degree Murder.

Post-conviction counsel at Petitioners Evidentiary Hearing said he discussed Mr. Ford being charged with Felony Murder. (er. dñhi, trans p.166).

Trial counsel argued that she would show the jury "those who were not willing to testify for the state would be charged". And requested to present Mr. Ford's charges to the jury, the District Court denied that motion (trial transcripts Vol.III p.440-442).

Had both counsel properly investigated Mr. Ford's charges at trial and Post-conviction hearing, it would have shown that the state used the First Amendment complaint to coerce Mr. Ford into involving his Fifth Amendment right not to testify at the Petitioners trial.

Mr. Ford is an exculpatory witness that gave a statement to the detective that he did not see Petitioner on the scene of the crime.

### III. The Questions raised in this are important and Un-resolved

Petitioner has a fifth grade reading level App. N. There is no question as to if he is capable of arguing his constitutional violation to overcome the procedural default without special counseling assistance. Petitioner has been diligent in presenting newly discovered evidence that was not properly presented to the District Court to show that the state has violated Petitioners right to a ~~ftora~~ (fair trial).....

## CONCLUSION

The judgment below will rest in a (mis-carriage of justice). Petitioner has been diligent claiming his innocence.

Did the state use the First Amendment complaint to intimidate a exculpatory witness into involving his Fifth Amendment right to testify? at Petitioners trial?

And that both trial counsel, post-conviction counsel all rendered ineffective assistance of counsel for failing to investigate Mr. Fords charge and plea hearing App. k. p. 3?

This is a clear violation of the Fourteenth Amendment due process right to a fair trial.

This petition for a Writ of Certiorari should therefore be reviewed.....

Respectfully,