

No. 24-5425

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 20 2024

OFFICE OF THE CLERK

Shyne V Anderson — PETITIONER
(Your Name)

VS.

Cynthia Davis, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Sixth circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Shyne V Anderson Prisoner ID# 682513
(Your Name)

P.O. Box 45699
(Address)

Lucasville, OH 45699
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

This honorable court has already ruled that the suppression by the prosecution 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.

There are many different ways prosecution misconduct can amount to a brady violation. In this case delayed disclosure robbed Petitioner from discovering and inspection because the time it was presented was too late to do so. This time was during submission of evidence this prosecutor misconduct was properly objected by trial counsel and sustained by the trial judge preserving this for appeal.

However, along with petitioners preserved brady violation his Bias, insufficient evidence and his ineffective assistance claim for both trial and appellate counsel was avoided by the lower courts deliberate misleading judgments in doing so through unreasonable marshaling of petitioners claims in order to avoid the argument that was intended. Blandly tactics as if either they didn't understand claim or completely ignore it.

The questions presented is to be concise details in statement of case will reflect a brady violation do to delayed disclosure, a Bias claim do to trial judge personal observation. The evidence was insufficient and both trial and appellate counsel was ineffective.

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

- Brady v. Maryland NO. 490 supreme court of the united states
Decided May 13, 1963
- Burns v. United States NO. 16-7782 supreme court of the united states
Decided March 20, 2017
- Johnson v. United States NO. 06-203 supreme court of the united states
Decided May 12, 1997
- Sullivan v. Louisiana NO. 92-5129 supreme court of the united states
Decided June 1, 1993
- Sonnier v. Quarterman NO. 06-11804 supreme court of the united states
Decided October 9, 2007
- Rombilla v. Beard NO. 04-5462 supreme court of the united states
Decided June 20, 2005
- ~~Rob~~ Coleman v. Mitchell NO. 01-6000 supreme court of the united states
Decided October 15, 2001

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- APPENDIX L: Supreme court of the united states extension of time
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Appendix U: State court Record docket

TABLE OF AUTHORITIES CITED

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Johnson v. United States

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Sullivan v. Louisiana

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Rambilla v. Beard

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Coleman v. Mitchell

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STATUTES AND RULES

Brady rule 2-2(b)(1)

OTHER

N/A

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 I to the petition and is

☐ reported at N/A; 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 E to the petition and is

☐ reported at N/A; 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 B to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Eighth Appellate District court appears at Appendix A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Eighth Appellate District court
appears at Appendix C to the petition and is
unpublished.

The opinion of the Supreme court of Ohio court
appears at Appendix D to the petition and is
unpublished.

The opinion of the U.S. District court Northern Division court
appears at Appendix F to the petition and is
unpublished.

The opinion of the U.S. District court Northern Division court
appears at Appendix G to the petition and is
unpublished.

The opinion of the U.S. court of Appeals Sixth Circuit court
appears at Appendix H to the petition and is
unpublished.

The opinion of the U.S. court of Appeals Sixth Circuit court
appears at Appendix J to the petition and is
unpublished.

The opinion of the U.S. court of Appeals Sixth Circuit court
appears at Appendix K to the petition and is

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Feb, 20, 24.

☐ 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: March 28, 2024, and a copy of the order denying rehearing appears at Appendix J.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including August 25, 2024 (date) on July 26, 2024 (date) in Application No. 24 A 86.

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 Jan, 10, 18. A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due process clause of the fourteenth Amendment equal Protection clause

STATEMENT OF THE CASE

During Direct Appeal there was a conflict of interest between Petitioner and Appellate counsel. Petitioner filed a motion to withdraw counsel (Appendix A) on grounds that counsel was not communicating with Petitioner to ensure she raised all his arguments and feel she is not in his best interest. The Eighth District ordered Appellate counsel to respond to motion she did not object to be removed (Appendix B). Petitioner files a motion for new Appellate counsel (Appendix C). The Eighth District denied motion forcing Petitioner to go forward with claims that lack merit. The Eighth District later affirm judgment (Appendix D) also The Ohio supreme court declines (Appendix E).

Petitioner files Application to Reopen 26(b) (Appendix F) on grounds that Appellate counsel was ineffective for leaving out these winning claims. Prosecution Misconduct which contains Petitioner's Brady violation, Judicial Findings contrary to Evidence which contains Petitioner's Bias claim, Ineffective assistance of trial counsel, Ineffective assistance of Appellate counsel and Insufficient Evidence.

The Eighth District judgment denying application to reopen (Appendix G) deliberately misleads Petitioner's claims first in Prosecution Misconduct, they claim it was difficult to discern to which cell or conversation Petitioner was referring and made their ruling on exhibit 6 the conversation partially played completely leaving out a ruling on the cell that contained all the calls between Petitioner and the states alleged rape victim that the defense had no knowledge about. After petitioner made clear reference to both in his 26(b). However the whole conversation in exhibit 6 should have been played. The Eighth District claim to reviewed all of exhibit 6 without holding a hearing to ensure that was a fact. Then the Eighth District misleads Judicial Findings Contrary to Evidence that contains Bias claim marshaling it to manifest weight when clearly the claim was directly intended for the trial judge personal opinion that Petitioner was guilty of alleged burglary. The Eighth District completely avoids a ruling on their personal opinion in their judgment. As to ineffective assistance of trial counsel by the Eighth District not holding a hearing in regards to exhibit 6 only they can say there was nothing exonerating in this call no evidence was produced to indicate this is a fact also if the state granted discovery Petitioner can prove trail

Counsel never gave or went over discovery with petitioner the lower courts denied every motion for discovery. (Appendix U.) As to ineffective assistance of Appellate counsel by the Eighth District misleading claims Appellant counsel could not be ineffective for failing to raise them, rather as to insufficient evidence against the Eighth District matches this claim to manifest weight knowing it will not hold in federal court, had Appellant counsel raised insufficient evidence this claim would have prevailed. Petitioner then appeals his 26.b to Ohio Supreme Court also informing them of misleading judgment. (Appendix F) Once Supreme Court declines jurisdiction. (Appendix D) It should be noted during the time Petitioner filed his 26.b he did not have transcripts but the record reflect he filed a motion for transcript in every lower court. (Appendix U)

However the Northern District court ordered the state to give them to Petitioner during habeas corpus proceeding. The record correspond to Petitioner's Prosecution misconduct argument that condemns his Brady violation. (Appendix Q) Exhibit 6 is the conversation partially played on exhibit (7) is the 103 jail conversation the prosecution withheld during trial and tried to submit them without the defence discovering them. This misconduct was objected by defense counsel and sustained by trial judge, on Appeal Petitioner argues these conversation will prove he is innocent of rape and do to the states Brady violation robbed him of the opportunity to present these facts this delayed disclosure was deliberate had Petitioner had these conversation early on in trial and not when it was too late to use them. This evidence would have more than likely changed the outcome of his rape conviction.

Also in (Appendix Q) the transcript correspond to Petitioner's Judicial Findings Contrary to the Evidence argument that condemns his Bias claim where the trial judge found Petitioner guilty from her own personal opinion by stating "I feel he is very athletic and found a way in the window" when the states own witnesses and evidence proves it was impossible. This extrajudicial finding proves Petitioner was denied a fair trial.

The United States District Court Northern Division later overruled Petitioner's objection and denied Petition. (Appendix F) Denied 59(e). (Appendix G) Denied pauper status (Appendix H)

Lastly the sixth circuit denied Petitioners COA application and pauper status (Appendix I). Denied Petitioners en banc hearing (Appendix J) and rule 60(b) (Appendix K). All of these judgments avoided a ruling on Petitioners claims stated above, that Petitioner explained in great detail from the transcript.

Previously stated with respect to the Appendix Petitioners Brady violation occurred during admission of evidence:

The Prosecution: And then 7 is the disk with the 103 jail calls to Ashlie Warren

The Court: Any objection

The Defense: same objection

The Prosecution: I'd just like to make a quick argument, if you'd allow

The Court: That's going to be sustained.

(Transcript page 243 paragraph 23/25, page 244 paragraph 1/6)

It is not hard to imagine the many circumstances in which the belated revelation of Brady material might meaningfully alter a defendants choices before and during trial how to apportion time and resources to various theories when investigating the case whether the defendant should testify whether to focus the judge attention on this or that defense, and soon, to force the defendant to bear these costs without recourse would offend the notion of a fair trial that underlies the Brady principle (United States v. Burnside)

In this case completely robbed the defendant to discover, due to this delayed disclosure that was used to suppress this evidence when this evidence would have more than likely changed the outcome of the verdict (Brady v. Maryland). When on appeal Petitioner argues these conversations contain the alleged rape victim confession or never being raped

However as stated above this prosecution misconduct was objected and sustained preserving it for Appeal. Due to the lower courts misleading judgment they did not have to reverse conviction. This Prosecution misconduct was a violation of

due process clause of the fourteenth Amendment.

Again previously stated with respect to the Appendix Petitioners Bias claim occurred when trial judge rejected evidence and testimony and made personal opinion that Petitioner was guilty of aggravated burglary.

The Defense: Do you recall the weather conditions you said there was snow.

Officer Surtz: It had snowed there was snow on the ground.

The Defense: Okay so were there any footprints outside the window?

Officer Surtz: No.

The Defense: Oh so there's no footprints outside the entry, the alleged entry point for this burglary correct?

Officer Surtz: Correct.

The Defense: And there's no trees, no ladder, or anything out there.

Officer Surtz: Correct.

(Transcript pages 227, paragraph 19-25, and page 228, paragraph 1-6)

The Defense: And you said that window was roughly what 3 or 4 inches open?

Officer Surtz: About 6 inches open.

The Defense: It wasn't open far enough for a human being to come in it, is that fair to say?

Officer Surtz: We didn't think so.

The Defense: You didn't think so, you actually didn't believe someone came through that second floor window, is that fair to say?

Officer Surtz: Second floor, no.

(Transcript pages 226, paragraph 18-25, and page 227, paragraph 1-3)

Alleged victim: I saw him -- im standing there on the phone with my back towards him, I turned because I heard something, and he's in the window, literally in the window coming in.

(Transcript page 131, paragraph 13-16)

Then later:

Alleged victim: I was sleep when he climbed up into the apartment.

(Transcript page 152, paragraph 1-2)

The alleged victim testimony during cross examination by the prosecution:

The prosecution: Is there a way from the outside of your apartment to get up to the second floor window like that?

The alleged victim: No.

The prosecution: And had you ever seen him enter it in that way before?

The alleged victim: No.

(Transcript page 133, paragraph 5-7)

The evidence and officer surts testimony in addition to the alleged victim self impeachment proves that her testimony was false. These facts clearly indicates that do to the judge bias and prejudice hostile behavior that she displayed a deep seated favoritism to find Petitioner guilty even when perjury is clearly involved in the state witness testimony. From these facts the judge relied on her personal opinion to ensure this claim the trial judge was asked directly from deane crutcher.

The defense: 20 feet off the ground judge.

The court: Uh-huh.

The Defense: With no ladders, ropes, or magic carpets?

The court: Yeah.

(Transcript page 269, paragraph 14-19)

The court: I feel hes vary ethutic and found a way.

(Transcript page 269, paragraph 1-2)

This plain error requires remand when sentence based on non-existent material facts which affected fairness, integrity, or public reputation of proceeding (U.S. v. Wilson). The due process clause forbids the judge to rely on materially false or unreliable information. This trial judge indulged in

remarks indicating her personal opinion that the accused is guilty and such remarks in most cases are considered so flagrant as to require a reversal of the conviction. The court's function is not to make an independent factual determination about what likely occurred but rather to assess the likely impact of the evidence. This trial judge extrajudicial opinion lying outside or beyond court proceedings forming no valid part of a case before a court.

Rejecting contention that cause need not be shown if actual prejudice is shown, even if alleged constitutional violations call into question the reliability of an adjudication of legal guilt (*Harris v. Dugger*) (*Harris v. Wainwright*). This recognized a narrow exception to the cause requirement where a constitutional violation has probably resulted in the conviction of one who is actually innocent of the substantive offense.

Pres. trial judge is a structural error and thus is subject to automatic reversal (*Edwards v. Balisak*). A criminal trial by a partial judge is entitled to have his conviction set aside no matter how strong the evidence against him (*Johnson v. United States*) (*Sullivan v. Louisiana*). If the lower court never mislead Petitioner's claim trial judge would be held for her conduct and this honorable court must hold her responsible.

Again previously stated with respect to the Appendix trial counsel was ineffective for failing to investigate for mitigating evidence, making it unlikely that effective evidence would be uncovered was unreasonable strategy (*Sommers v. Quarterman*). As to the lower court misleading judgment the ruling was incorrect in regards to the alleged rape victim and Exhibit 6 the phone call that was partially played. Counsel's failure to discover and present mitigating evidence was ineffective assistance (*Abraham v. Mitchell*). However even when the defendant has failed to give complete information to counsel about the existence of mitigating evidence, counsel still must make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial (*Rompilla v. Beard*). In *Rompilla* counsel failed to do so and the courts found that this omission constituted ineffective assistance, despite defendant's obstruction of counsel's investigation. Failure to investigate before deciding not to present mitigating evidence is deficient performance as a

matter of law under Strickland quoting (Coleman v. Mitchell).

Again as previously stated with respect to the Appendix in regards to Ineffective Assistance of Appellate counsel and Petitioners Insufficient Evidence claim. Do to the Eighth District court of Appeals denying Appellate counsel to withdraw after she did not object forced Petitioner to go along with the claims that lack merit in addition to Appellate counsel leaving out there winning claims in the Petition. Appellate counsel should have raised insufficient Evidence instead of manifest weight both Appellate counsel and the Eighth District knew that it would not hold in federal court, that's why Appellate counsel did not raise it following the Eighth District misleading judgment ruling on this claim to be manifest weight. This unceasing strategy was a violation of Petitioners equal protection of the law guaranteed by the fourteenth Amendment.

... lastly in Appendix u in regards to the alleged rape victim petitioner has file countless motions for discovery. Motions to pull call records. Newly discovered evidence from conversations petitioner had in prison with the alleged rape victim confessing she was not raped.

REASONS FOR GRANTING THE PETITION

The lower court misleading judgments in order to avoid constitutional violations deliberate abuse to a pro se petitioner and has so far departed from the accepted and usual course of judicial proceedings. The severe denial of a full and fair opportunity to adjudicate merits is disturbingly compelling and falls in the fashion of corruption. As a pro se Petitioner the lower court had discretion to liberally construe these obvious constitutional claims instead chose to use any and every technicality or vehicle to avoid them. Petitioner's claims was not denied they were avoided by the government who took an oath to uphold justice. Over the course of nine and a half years the record reflect Petitioner's due diligence arguing the same constitutional claims in every lower court, which only make a reasonable mind assume the lower courts relies on Petitioner to give up, rather than properly addressing claims.

Lastly Petitioner's constitutional claims could not conflict with relevant decisions of this court if they were never ruled on. Petitioner is asking this honorable court to exercise its supervisory power and grant this certiorari. This is of national importance to protect pro se petitioners from judicial bias that is performed by gathering courts with no fear of consequence, no regard to tax payers funds that pay for these malicious proceedings. Additionally create a mandatory system that enforce every criminal defendant sign a form that indicates they either was given or was reviewed every portion of discovery in presence of counsel [REDACTED].

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shyne R...

Date: August 20th 2024