

NO. _____

24-5662 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

SEP - 3 2024

OFFICE OF THE CLERK

NOEL L. BROWN - Petitioner

-against-

KEN HOLLIBAUGH, Superintendent SCI-Somerset, et al., - Respondent(s)

ON PETITION FOR WRIT OF MANDAMUS TO
THE UNITED STATES SUPREME COURT

(NAME OF COURT THAT LAST RULED ON THE MERITS OF THIS CASE)

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

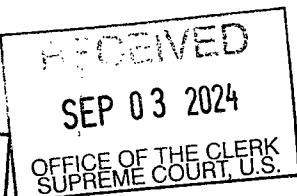
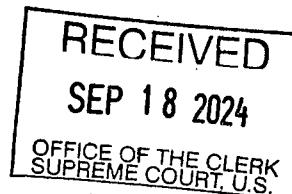
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petition for Writ of Mandamus under 28 U.S.C. §1254(1).

Noel L. Brown - MW0387

SCI-SOMERSET

1590 WALTER MILL ROAD, SOMERSET P.A. 15510*



QUESTIONS PRESENTED

1. Does the discovery of evidence withheld at trial intentionally, by the prosecution, not allowing arresting officer to testify in a trial proceeding, or allowing the defense to cross examine, presents a violation under the Brady standards?
2. Is it a fundamental miscarriage of justice for a District Court to not directly transfer a petition for habeas corpus, to the Court of Appeal upon showing of "cause & prejudice" exculpatory evidence?
3. Is knowledge of innocence by a investigating officer during an investigation that would have prevented any juror from convicting the wholly innocent petitioner. Intentionally withheld by arresting officer not testifying at trial, a Constitutional violation under Brady?
4. Should the Court deny a motion to appoint counsel, when a petitioner identify objective factors external to the defense at trial that impeded their efforts to comply with the State's procedural rule. When actual innocence by new reliable evidence that was not presented at trial, due to the failure of the arresting officer to attend, and testify under oath at trial. A fundamental Miscarriage of Justice?
5. Does the United States Supreme Court, has jurisdiction to compel the District Court, to transfer the petition for habeas corpus, to the Court of Appeals pursuant to 28 U.S.C. §1631. Because the district court lacks jurisdiction to consider the petition. Or to appoint counsel to aid petitioner because applicant shows factual prejudice, & the claim could not have been discovered previously through the exercise of due diligence?
6. Is a Brady claim a showing that those violations are so great as to be of a constitutional dimension. If the petitioner makes the standard showing of cause and prejudice, or establishes a fundamental miscarriage of justice?

LIST OF PARTIES

A list of all parties to the proceedings in the court whose judgment is the subject of this petition for a Writ of Mandamus is as follows:

1. Ken Hollibaugh, Superintendent SCI-Somerset
2. Attorney General of Pennsylvania.

Address: Strawberry Square 18th FL.
Harrisburg, P.A. 17106.

TABLE OF AUTHORITY

CASES:

BRADY V. MARYLAND.....

STATUE & RULES:

28 U.S.C. §1631.....

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APPENDIX (A): COPY OF THE UNITED STATES DISTRICT COURT DECISION AND ORDER

IN THE SUPREME COURT OF THE UNITED STATES
FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue to compel the District court to either transfer petition, or appoint counsel in the habeas corpus petition.

OPINION?ORDER

The opinion of the Federal Court to on the merits of this case appears at Appendix (A) to this petition and is reported at United States District Court, for the middle district of Pennsylvania, on August 14, 2024.

JURISDICTION

The date on which the United States District Court decided my case appears at appendix (A).

The jurisdiction of the United States Supreme Court, is invoke under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. In *Brady v. Maryland*, the court held that "undisclosed evidence and testimony improperly withheld, would have changed the result of the proceedings, because it is exculpatory, and impeaching".
2. Pursuant to 28 U.S.C. If a petitioner files a second or successive habeas petition in a district court without the permission of a court of appeals, "the district court only option is to dismiss the petition or transfer it to the court of appeals.
 - (a) The writ of habeas is the only relief that an wrongfully convicted or incarcerated petitioner has to rely on. Therefore, when an issue of law clearly established under the rules or constitution, has been misinterpreted by the reviewing court. This supervisory court must exercise its discretionary powers, to clearly provide true meaningful explanation or definition of the law which had been misinterpreted by the reviewing court.
 - (b) Adequate relief cannot be obtained in any other form or by the Third Circuit Court. Because the fact the District Court, cannot discern what relevance the Brady allegation has to petitioner's conviction. The court will not transfer the petition to the Third Circuit. Furthermore, until this court address Brady violations in a clear definition, the Third Circuit will not grant relief authorization to filing a second Writ of Habeas Corpus Petition.
 - (c) Upon granting of Writ of Mandamus, this courts explanation/definition of Brady, will aid of the lower court's appellate jurisdiction, in establishing a Brady violation occurred when investigating arresting officer testimony was improperly withheld, also withheld undisclosed evidence. Thereby, recalling the mandate dated 08/14/2024, memorandum that may have caused the District Court to not find petitioner meeting his burden of establishing a Fundamental Miscarriage of Justice.

STATEMENT OF THE CASE

Petitioner brought his petition for writ of habeas corpus action after he discovered that the arresting officer had prior knowledge that actual innocence existed and petitioner was not the person whom had committed crimes against another. Exculpatory critical physical evidence that was not presented at trial, due to Brady violations. The Driver License of the actual suspect, had been withheld from the jury, and that those violations are so great as to be of a constitutional dimension. Petitioner sought remedy for his state conviction, the very fact or duration of his confinement. That he is in custody in violation of laws or treaties of the United States.

On August 14th 2024, the District Court, Denied without prejudice. Furthermore, refuse to directly transfer the petition to the court of appeals. AND denied petition to appoint pro bono counsel to the case. "Cause and Prejudice". A federal judge as decided that scrupulous evidence submitted at trial, obtained without warrant and investigating arresting officer whom did not testify at trial withhold valuable evidence of actual innocence intentionally from the jury. Do not even resemble a Brady violation.

REASON FOR GRANTING THE PETITION FOR WRIT OF MANDAMUS

The District Court de novo dismissal for "lack of jurisdiction, lacks an arguable basis either in law or in fact. By not choosing to transfer the petition, the latter of the two options pursuant to 28 U.S.C. §1631. The court has prejudice petitioner. Because the court has within its power to exercise good faith by transferring the petition, so not to cause undue delay, or further prejudice. Furthermore, to deny a timely petition to appoint a pro bono counsel, regardless of whether lacked jurisdiction was a miscarriage of justice. Because petitioner demonstrated actual innocence by asserting new reliable evidence that is exculpatory or critical physical evidence that was not presented at trial.

Due Process requires procedural protection, and a fundamental fair process including the district court option to transfer petition to the court of appeals pursuant 28 U.S.C. §1631. Likewise, a need for redress when undisclosed evidence and testimony had been improperly withheld, that would have changed the result of a trial proceeding, whether exculpatory or impeaching.

CONCLUSION:

It is for the foregoing, that petitioner prays this supervisory court issue a mandamus to compel the lower courts to recall the mandate. Thank You.

08/24/2024

Respectfully Submitted,

