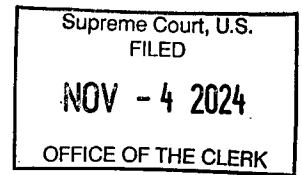


No. 24-6680

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



VICTOR CHARLES ROGERS - Petitioner

v.

BOBBY LUMPKIN - Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

VICTOR CHARLES ROGERS - Petitioner

V.

BOBBY LUMPKIN - Respondent

PETITION FOR WRIT OF CERTIORARI

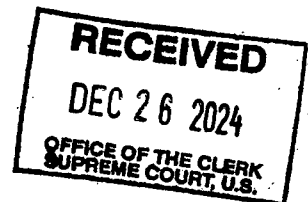
Pro Se Petitioner

Victor Rogers #602346

Wallace Pack Unit

2400 Wallace Pack Rd.

Navasota, TX 77868



QUESTION PRESENTED

1. Is it right for a Circuit Court to deny a COA on a procedural default when filing actual-innocence?
2. Is it right also to not look at the merits of a successive petition for COA when filing actual-innocence?
3. Isn't the Courts supposed to look at the actions of the trial attorney when filing Constructive Denial of Counsel?
4. When DNA testimony shows that petitioner is not the person a good showing of actual-innocence?
5. Isn't it a violation of a petitioner's Constitutional right when the trial lawyer goes to trial without getting a ruling on pretrial motions?
6. Isn't it a violation of petitioner's Constitutional right when trial Counsel allow the judge to go into the jury room while they were in deliberation?

PARTIES

Petitioner, prose:

Victor Rogers #602346, 2400 Wallace Park Rd, Navasota, Tx 77868

Respondent,

BOBBY LUMPKIN

PRIOR OPINIONS AND ORDER

September 13, 1991- Conviction Agg. Sexual Assault #590057

April 9, 1992- Direct Appeal affirmed Rogers v. State, A14-91-00841-CR

June 28, 1995- Writ of habeas Corpus dismissed Civil Act. No. 4:94-2953

2003-Tex. App. Lexis 9264 DNA Testing. dismissed in January 20, 1995.

January 14, 2004-Writ dismissed

June 29, 2004-Writ of habeas Corpus filed, denied Sept. 2022

July 14, 2023-writ filed dismissed, appeal filed in 5TH Circuit COA denied

March 27, 2024- 2811 S.C. 2254 writ of habeas Corpus dismissed

August 23, 2024- Appealed to United States Court of Appeals - denied COA.

October 9, 2024- Rehearing en banc - denied

BASIS OF JURISDICTION

Jurisdiction is conferred on this Court by the U.S. Supreme Court Rules 10(c) and 13(1). The United States District Court for the Southern District dismissed 2254 habeas corpus without prejudice on March 27, 2024. Petitioner appealed for a CDA on May 17, 2024 and denied on Aug. 5, 2024 for a procedural ruling and failed to obtain authorization to file pursuant to 28 U.S.C. § 2244(b)(3)(A). Petitioner asked for a rehearing and was denied en banc on October 9, 2024 for the same reasons. The Court failed to rule on the merits on his writ for actual innocence and Constructive Denial of Counsel. See *McQuiggin v. Perkins* 569 U.S. 383 This violates petitioner's Due Process Clause of the U.S. 14th Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES

UNITED STATES CONSTITUTION Amendment XIV

UNITED STATES CONSTITUTION Amendment V and VI

STATEMENT OF THE CASE

Petitioner, Victor Charles Rogers, was convicted of aggravated sexual assault on September 13, 1991. Trial Court held his pretrial hearing in March, 1991. Trial Counsel filed 5 motions from Discovery to Suppression of evidence. The Trial judge told the trial attorney and the district attorney that he would rule on motions when the DNA test came back. Trial Counsel and the D.A. waited until the trial judge was going on vacation, then they took petitioner to trial without us being on the docket, and without the knowledge of the trial judge.

Trial Counsel failed to get a ruling on pending motions. Counsel failed to interview witnesses if he had he would have learned it was a female officer who stopped the petitioner but he ignored it. The trial Counsel never objected to the Complainant knowing who petitioner was after she stated the police told her. Three Scientists testified they did the DNA test in my case. Two from the Houston Police Crime Lab named Jim Bolding and Christi Kim testified they do DNA extractions, where they extract the blood from the Semen. They stated that none of petitioner's blood was in the Semen. The other Scientist named Holly Hammond said she was from Baylor College of Medicine and that she didn't complete testing, she got as far as three stages. She got two stages negative and one stage positive, then she said it was a strong possibility that petitioner was the guy. Under Federal Rules of Evidence Rule 403, states the Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury. The trial lawyer in closing argument stated that all the witnesses and testimony shows petitioner had sex with the Complainant. Then he said "We already told you that." The D.A. objected. The witness testimony violated the Federal Rules of Evidence Rule 702(d). The evidence and testimony in the trial regarding the DNA test showed that petitioner was not the guy who did this case.

ARGUMENT

Petitioner, Victor Charles Rogers filed motions claiming actual-innocence and Constructive denial of Counsel. The State Court denied the motions using the Tex. Code of Crim. Proc. Art. 11.07 Sec. 4(a)(2). Which violates the actual-innocence claims in Texas habeas law. In *Herrera v. Collins*, 506 U.S. 390, Claims in which a petitioner asserts newly discovered evidence establishes an applicant's innocence. In which DNA testing leads to exoneration.

In this case the two Scientists that testified in petitioner's were later fired by the Houston Police Crime Lab and the Courts stated that they gave false DNA testimony in thousands of cases. The Courts closed down the Crime Lab and started Chapter 64. If anyone had a DNA test done by the Houston Police Department could file for a DNA test. Petitioner filed in 2003 and the lawyer the Court gave me went to Africa and left my case on the docket for two years. The Court gave me another lawyer who never did the test. Petitioner filed his claim in the United States District Court for the Southern District on March 27, 2024. The Court dismissed it without prejudice for violation of 28 U.S.C. § 2241 and Rule 4 of the rules governing rule § 2254. Petitioner appealed to the United States Court of Appeals on August 23, 2024. The Court denied the COA on the basis of a successive writ. Petitioner's writ was denied for 28 U.S.C. § 2244(b)(3)(A). In petitioner's case the DNA showed he was not the guy. Petitioner's Counsel told the jury he did the case showed Constructive Denial of Counsel. It also showed a grave miscarriage of justice. If not for Counsel's ineffectiveness no reasonable jurist would have found petitioner guilty.

Submitted on 4th day of
November 2024.

December 11, 2024

Respectfully Submitted
Victor Rogers