



Gary D. King #1300812

No. 17-6874

P.O. Box 648

Pelham, Georgia 31779

Petitioner's Motion, Brief, and Affidavit

ATTN: Hon. Chief Justice John Roberts

IN THE SUPREME COURT OF THE UNITED STATES

GARY D. KING #1300812

Appellant.

vs.

No. 17-6874

WALTER BERRY, Warden

Appellee.

PETITION FOR REHEARING AND BRIEF SUPPORTING

COMES NOW GARY D. KING, Appellant, request this HONORABLE COURT to revisit the denial of writ of certiorari and shows as follow

1.

JURISDICTION

The United States Supreme Court has jurisdiction to rehear the denial of writ of certiorari, and that this request is presented in good faith and not for delay of the substantial and controlling grounds herein.

STATEMENT OF CASE

On January 23rd, 2018, I received an order dated January 16, 2018 that my "petition for a writ of certiorari is denied." Signed by Scott S. Harris, Clerk

STATEMENT OF FACTS

My case have been very complex through out my journey here, but I refuse to be silenced.

My trial and direct appeal, appointed counsel, Jamie Roberts, did abandone substantial grounds that contributed to my conviction and procedural bars coupled with judicial bias.

I never agreed to my trial/appellant counsel not raising substantial claims on appeal, Botson for one was manifested discrimination.

I was tried by thirteen white jurors and one black female. [22-10] pp. #177-185

The prosecutor, Monque Kirby, is a white female, trial judge, Dennis Blackmon (white male), and the alleged victim Destiny Hall, black female.

All, black male jurors were struck by the pro-
the GK 2.

secutor to a zero %. I, Gary D. King, is a black male.

The jury pool started at 40 jurors, nine black jurors, thirty one white, or 22.5 % black and 77.5 % white. Juror #24 and #27, Grady Hill & Debra Harris were excused for cause that left seven black jurors, or 18%. See Jury Strike List writ of certiorari petition, also see "sworn affidavit" (attachment).

Five of seven blacks were struck by the prosecution, or 83%. 13 whites (93%) and (1) black (7%) was on the panel that began at 22.5%".

There is no evidence in my ~~per~~ transcript that any of the stricken black jurors were partial, bias, fixed opinions, or could not base their verdict on the evidence as required under Georgia's law O.C.G. A § 15-12-164(a)(1)(2), and (3). to justify their strikes.

Nothing from "the horses mouth" regarding partiality. Prosecutor seated whites for same reasons that she struck the black jurors (for knowing a defense witness).

I had an ~~ex~~ *ex* libi witness, Amanda Clayton, that testified truthfully. [Doc. 18, 19]. Not Guilty

My first trial proceedings in November of 2008 ended in a hung jury. I had three black jurors.

African-Americans and other minorities voted in record numbers in 2008 (Barack Obama), but my jury trial in January 2009, I only had one black female juror, no black males and thirteen white jurors drawn from republican districts no doubt. More black jurors would have kept the debate honest and pressure off that one black female who was dead locked for a while. The first trial was clearly used as a trial run, I am no fool.

The U.S. federal courts agreed with the state court's (Troup County Superior Court, LaGrange, Georgia Coweta County Circuit) ruling to reject my Botson objection, but granted a petition for writ of habeas corpus to a white female (Lisa Jo Chamberlin) 855 F.3d. 657 (2017) 5th & 11th Cir.

My original petition was filed in the U.S. Middle District, DC # 1:15-cv-00116. I never agreed to transferring my case back to Newnan, Georgia (Coweta County).

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2.

STATEMENT OF ISSUES

I. Constitutional Ineffective Assistance of Trial Counsel

1. Should a trial counsel challenge a prosecutor's pretextual race-neutral explanations?

II. Constitutional Ineffective Assistance of Appellant Counsel

1. Should an appellant counsel abandon substantial grounds on appeal without a defendant's consent?

III. Is It Not Unconstitutional For A Juror Not To Be Involved When His Strike Is The Issue

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3.

ARGUMENT AND CITATION OF AUTHORITY

I. Constitutional Ineffective Assistance of Trial Counsel

1. Should a trial counsel challenge a prosecutor's pretextual race-neutral explanations?

(a) Because the state prosecutor, Monique Kirby (white female) seated white juror's #16 Michael Darren Heath, #35 Anne H. Cook, #36 Derrick Bryan, and juror #39 Laura Morris for same reasons that she struck black juror's #2 Lachantris Edmonson, #23 John Richard Atcherson, and #32 Leroy Sheppard (for knowing a defense witness);

Monique Kirby's race-neutral explanations for striking black juror's #2, #23, and #32 (for knowing a defense witness) were clearly pretextual constituted by seating white juror's #16, #35, #36, and juror #39 that said they knew a defense witness during open court voir dire.

Therefore, my "state appointed" trial counsel, Jamie Roberts, should have challenged the "state prosecutor", Monique Kirby (white female) pretextual

race-neutral explanations because she seated white jurors #16, #35, #36, and #39 unconstitutional for same reasons that she struck the black jurors #2, #23, and #32 (for knowing a defense witness). I am a "shit hole" African-American also.

Black jurors #24 and #27 (Grady Hill & Debbra Harris) were excused for cause. The panel seated was thirteen white jurors and one black female. See Jury Strike List, writ of certiorari petition [Doc. 22-106] #177-#185

"First, the prosecutor's stated reasons for striking the juror[s] is [] one that would lead to the disproportionate exclusion of African-Americans. See Hernandez v. New York, 500 U.S. 352, 363 (111 S. Ct. 1859, 114 L. Ed. 2d. 395) (1991) (plurality opinion) (explaining that if "a prosecutor articulates a basis for a peremptory challenge that results in the disproportionate exclusion of a certain race, the trial judge may consider that fact as evidence that the prosecutor's stated reason[s] constitutes a pretext for racial discrimination"). The reason also did [] apply to similarly situated nonblacks who were permitted to serve. See Miller-El v. Dretke

545 U.S. 231, 241 (125 S.Ct. 2317, 162 L.Ed. 2d 196) (2005) (explaining that if "a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise - similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson's third step") Bester v. State, 294 Ga. 175 (3) (751 S.E. 2d 360 (2013)).

My trial counsel, Jamie Roberts, were objectively unreasonable to not challenge prosecutor's, Monique Kirby's, purposeful discrimination, because the outcome of my trial would have been different given the fact that there were three black jurors on the panel of my first trial ~~were~~ ^{and} the jury was hung resulting in a mistrial. Roberts failure to challenge gave Kirby a free pass to complete her trial run of my first trial, and seated her white peers in the second trial (conservative republicans drawn from republican districts). It was not harmless because blacks and whites (democrats and republicans) have different realities. More black jurors would have kept the deliberations honest.

I am an innocent black man.

(b) Because the state prosecutor struck every single black male juror (in a clear pattern) to a racially disproportionate jury panel, the white trial judge, Dennis Blackmon should have considered that as evidence of gender discrimination, I am a black male, therefore, Judge Blackmon's ruling was clearly contrary to the evidence and clearly established state and federal laws.

The jury ^{pool} ~~panel~~ started with 40 jurors (77.5% white 22.5% black). The panel was 13 white jurors, or 93% white and 7% black.

Monique Kirby struck 5 out of 7 or 83% of the black jurors.

The conservative federal 11th Cir. Courts, Georgia, agreed with this bigotry. Compare conservative court decision with "a white female's" Batson claim excluding black jurors, Chamberlin v. Fisher, 855 F.3d. 657 (2017) 5th & 11th Cir. (The federal court granted the white female's, Lisa Jo Chamberlin's, petition for writ of habeas corpus on her Batson claim).

I never agreed to my counsel not raising this substantial Batson claim on appeal.

II. Constitutional Ineffective Assistance of Appellant Counsel

"... the discretionary decision to deny the [petition for writ of certiorari] does not deprive this Court of jurisdiction to find that the substantive issue is properly before us. [DISCRIMINATION] Williams v. Georgia, 349 US 375, 389, 99 LED 1161, 755, Ct. 814 (1955)

(C) Because I was represented at trial and on direct appeal coupled with judicial bias, my substantial grounds were barred due to failure of appellant counsel to perfect the record coupled with judicial bias. Therefore, my appellant counsel was the cause of my substantial rights violated for failure to perfect the record for appeal ~~not~~ coupled with judicial bias. See barred claims Writ of Certiorari Petition # 17-6874 [Doc. 22-10(a)] pp. # 160 - # 168

I had an alibi witness, Amanda Clayton, who testified truthfully [Doc. 18, 19]. There are no #ME TBO allegations tied to me because that wasn't or is my character.

III Is It Not Unconstitutional For A Juror Not To Be Involved When His Strike Is The Issue?

(D.) Because I witnessed my trial proceedings open court voir dire exchange, I am totally convinced that it is unconstitutional for a juror not to hear the reason for his strike, because the party on the record giving race-neutral explanations is similar to an accuser, and that should constitute the jurors right to a response on the record; otherwise, the record can not conform to the truth and should be unlawful not to hear "strait from the horse's mouth". See Voir dire [Doc. 22-10] pp. # 177-185

There's three sides to every story, there is one side, there's the other, and then the truth. The truth is, there is zero evidence in my record that any of the five prospective black jurors struck by Monique Kirby and the two excused for cause held a fixed and definite opinion of my guilt based on "knowing a defense witness" as required to justify those strikes on the black jurors under

Georgia's law O.C.G.A § 15-12-164 (a) "On voir dire examination in a felony trial, the jurors shall be asked the following questions:

(1) "Have you, for any reason, formed and expressed any opinion in regard to the guilt or innocence of the accused?"

(2) "Have you any prejudice or bias resting on your mind either for or against the accused?"

(3) "Is your mind perfectly impartial between the state and the accused?"

"No man is above the law", no man". Neil Gorsuch, confirmation hearing 2017

The prosecutor's race-neutral reason for striking juror #25, Alvin McCants and juror #40, George Shank (black males) were that McCants [allegedly] "had a criminal record", and Shank's son alleged to be a criminal also. If true, then why were they put in the pool of 40 jurors? other black males were down stairs no doubt without

a criminal record. That is clearly why not allowing a juror to witness his explanation for his strike is unconstitutional, because in this case, #25 and #40 are black male criminals in the record. Is that true? See [Doc. 22-16] pp. #177-#185

"... The law presumes that potential jurors are impartial". Wells v. State, 336 Ga. App. 717, 721 (2) ; 783 S.E. 2d. 178 ; 2016 Ga. App. LEXIS 170(2016).

" In Batson v. Kentucky, the Supreme Court held that the Equal Protection Clause prohibits prosecutors from striking potential jurors " solely on account of their race." Batson, 476 U.S. at 89, 106 S. Ct. at 1719. In this respect, the Constitution " forbids striking even a single prospective juror for a discriminatory purpose."

Foster v. Chatman, — U.S. —, 136 S. Ct. 1737, 1746, 195 L.Ed. 2d. 1 (2016) (quoting Snyder v. Louisiana, 552 U.S. 472, 476 (2008) United States v. Lovett, 2016 U.S. App. LEXIS 21027 (IIA) (2016). See also jury strike list original Writ of Certiorari Petition SC# 17-6874.

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4.

CONCLUSION

Because my trial and appellant counsel, Jamie Roberts, was constitutionally ineffective for allowing the state prosecutor, Monique Kirby, to discriminate unchallenged and the trial judge, Dennis Blackmon, to agree contrary to the evidence, and not perfecting this manifested discrimination for appeal, it is beyond unreasonable. Discrimination is substantial. Therefore, my Fourteenth Amendment Equal Protection Clause and Sixth Amendment Right to effective representation is denied.

However, this substantive issue is before ~~THE~~ UNITED STATES SUPREME COURT now, and not the lower "political branches of government" that silenced me (procedural bar). "silence is betrayal"
Martin Luther King, Jr.

14.

WHEREFORE, I Gary D. King, prays that this HON-
ORABLE COURT. VACATE, REVERSE, and REMAND
Case no. 17-6874 without delay

Respectfully Submitted,
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Gary D. King, Pro Se

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