NO. 25-6205

IN THE

SUPREME COURT OF THE UNITED STATES

SONNY L. THOMAS

Petitioner,

VS.

SUPERINTENDENT MAHANOY SCI, et al.

Respondent,

On Petition For Writ Of Certiorari
To the United States Court of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS

1) Did the Third Circuit Court of Appeals err when it denied petitions Certificate of Appealability, holding "jurist of reason would not debate the District Courts decision to deny his Fed.R.Civ.P.60(b) motion"., and "Appellants allegations of Actual Innocence were insufficient to overcome AEDPA limitation period."

2) Does this Courts reasoning in Schlup v. Delo. 513 U.S. 298, 130 L.Ed 2d 808, 115 S.CT 851, and its progeny, Reeves v. Fayette SCI, 897 F.3d 154; 2018 U.S. App LEXIS 20364 No. 17-1043 (3rd Cir July 23, 2018) prohibit 'Late proffered testimonial evidence' that was available at trial, but, was wrongly excluded because of the ineffective assistance of trial counsel, as new evidence, for purposes of the Schlup, Reeves actual innocence gateway under limited circumstances.

3) Did the District Court err by applying a higher standard then that of Schlup v. Delo, 513 U.S. 298, and of Reeves v. Fayette SCI, 897 F.3d 154, when the court made it's determined as to whether the evidence presented by Thomas was 'new reliable evidence'.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

UNITED STATES SUPREME COURT

UNITED STATES COURT OF APPEALS

UNITED STATES DISTRICT COURT CASES

STATUTES

RULES

APPENDIXES

APPENDIXES CONTINUED

APPENDIXES CONTINUED

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI, Jury Trial for Crimes and Procedural Rights.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

DECISIONS BELOW

The ORDER of the United States Court of Appeals for the Third Circuit, published version, was not available at the time of this writing. They are reproduced at, Petitioners Appendix ("hereinafter Pet. App.") 1

The ORDER of the United States District Court for the Eastern District of Pennsylvania, published version was not available at the time of this writing. They are reproduced at, Pet. App. 2.

JURISDICTIONAL STATEMENT

Review of Petition for Writ of Certiorari. This Petitioner presents this petition to this Court based on the jurisdiction conferred to it by Article III, Section 1 of the United States Constitution, 28 U.S.C. §1254(1), and Rule 10 of the Supreme Court Rules. This Petitioner alleges the decision entered on March 10, 2025 in the United States Court of Appeals upholding without further comment or analysis, the decision of the United States District Court for the Eastern District of Pennsylvania, entered on August 23, 2024 which deals with an important federal question that has not been, but should be, settled by this Court.

STATEMENT OF THE CASE

On February 13, 2006 Mr. Thomas was convicted for a crime he did not commit. Thomas' conviction is the result of Trial Counsels ineffectiveness for erroneously

advising Thomas not to testify, thus wrongfully excluding potentially exculpatory testimonial evidence that was available at the time of trial that resulted in his conviction for a crime he did not commit. Approximately one year later Thomas was sentenced to spend the rest of his natural life in prison.

A state court jury convicted Thomas for the Murder of a Mr. Garcia ("Garcia"). Garcia had gained entrance into a secured building and made his way to Thomas' apartment, ("Apt") at that time Garcia just walked into Thomas' Apt uninvited. After he entered the Apt, he attempted to sell more drugs to Thomas. At the time Garcia entered the apt, Thomas was sitting on the floor and high from the drugs he and a friend had done just moments earlier. Thomas told Garcia that he did not have anymore money for drugs. Words were exchanged, Garcia became aggressive and attempted to intimidate Thomas into buying more drugs by acting like he was going to muscle him, beat him up. See Petitioners' Appendix 5. MOTION FOR POST CONVICTION COLLATERAL RELIEF (PCRA). Pgs. 12-13. Citing N.T. II Pgs. 166-67.

Thomas Grabs a 24-inch Samori Sword. A scuffle ensues. During the scuffle Garcia sustained approximately 80 wounds that ultimately lead to his death, and Thomas was bitten Six times. Thomas was arrested and charged that same night.

On Tuesday February 10, 2006 at the end of the evidentiary phase of the Trial there was a question as to whether Thomas was going to testify in his own defense. Trial counsel expressed to the Court that he "...prefer that he (Thomas) wouldn't..." testify but that Thomas does have the right to. At the close of the day the question

still remained. Thomas wanted to testify. He wanted to tell his side of what happen but counsel wasn't going to put him on that day and was "...going to talk to him about it..." Pet App 5. Citing N.T. Vol II Pg. 5 Lines 9-18; 255-57.

The next day Counsel informed the Court that Thomas "was not going to testify" Pet App 5, Pg.5 citing N.T. Vol III pg. 2, ln 3-5. The Court held a colloquy. Id pgs. 5-6. During which Thomas acknowledged that he was making the decision not to testify, of his own free will and that he understood he has a Constitutional Right to testify in his own defense and it was his desire to waive that right after discussing it with his counsel. Id Pg. 15-16.

The Commonwealth and the Defense rested their case ending the evidentiary phase. The Commonwealth and trial counsel adjourned to the Judges Chambers to prepare it's Point for Charge. Thomas was not present in the Chambers, nor did his Counsel inform him of the discussion that took place.

During the conference it becomes obvious that trial counsel was becoming frustrated with the Court and the Commonwealth for not allowing the specific Jury Instruction for Voluntary Manslaughter-Unreasonable Belief, alleging there was no evidence in the record to support the instruction, because Thomas did not testify, or, needs to testify to be entitled to the instructions. See Pet App 5. Pg. 6 citing to N.T. Vol III Pg. 24 lines 16-23; Pg. 30 lines 15-20; Pg. 33 lines 20-24; Pg. 36 lines 17-25; Pg. lines 1-4; Pg. 40 lines 18-25; Pg. 41 lines 1-9; Pg. 71 lines 18-25; Pg. 72 lines 1-6.

Counsel responded by stating "unless in the interest of justice I ask to reopen the trial and put him back on the stand and have him testify". (*The words "back on the stand" are a misstatement. Thomas never got on the stand because he was advised not to by the very counsel that wants to reopen the trial and put him on the stand*). The Prosecution objected to counsels challenge, stating "the case is closed...". Counsel then replied "I can still make that motion and let it go where it goes." *Id*, citing N.T. Vol III, Pgs. 73-74. The Court remained silent regarding counsels challenge to file a motion to reopen the trial. Counsel failed to followed through, and, never filed an objection during the charging of the Jury. Moreover, contrary to the Trial Courts conclusion that there was no evidence in the record, counsel did make Voluntary Manslaughter-Unreasonable Belief an issue during the trial through other evidence, mainly the tape of the Interrogation, and through the testimony of the Psychologist.

Counsels threat to ask for the Trial to be reopened so he could put Thomas on the stand, "in the Interest of Justice" *Id* is evidence counsel underestimated the strength of his defense and that he had incorrectly advised Thomas to waive his right to testify in his own defense, effectively wrongfully excluding potentially exculpatory evidence that counsel needed to prove his client's innocence of First-Degree Murder. Thomas's testimony was the very evidence counsel needed to secure a vital jury instruction in this case [1], and would have allowed the jury to weight all the facts.

Thomas' decision not to testify was based solely upon the erroneous advice of his counsel and therefore the decision not to testify could not have been knowingly and intelligently made. Additionally, the Court and the Commonwealth made clear to counsel during the charging conference the prejudices to Thomas for not testifying.

[1] The instruction was vital to defense for the following: 1) Thomas admitted he 'intended' to kill Garcia. 2) There are only two homicide offenses in Pennsylvania in where 'intent' must be proved, First-Degree Murder, and Voluntary Manslaughter-Unreasonable Belief. In this case, if, as it has been proven in this case there was evidence given by other sources to the jury to support a charge for Voluntary Manslaughter-Unreasonable Belief, but the jury was only given the charge of First-Degree, the jury has no other choice but to find him guilty of that because 1. He already admitted he intended to kill Garcia, and 2. That is the only other charge that involves 'intent'. Such an action by the Court denies the jury of an alternate choice based on all the facts present to it. See Schneble v. Florida, 405 U.S. 427, 92 S.Ct. 1056, 31 L.Ed. 2d 340 (1972).

In light of what transpired during the Charging Conference, that being counsels' own arguments for the Instruction of Voluntary Manslaughter-Unreasonable belief, and reference to evidence in the record to support the charge, counsel was ineffective for his failure to "make the motion" and to litigate the issue. Counsels' choice could not have been the result of any rational, strategic, or tactical decision to advance Thomas's best interest. Without a full disclosure of all the evidence, I,e,. Thomas's testimony. Thomas was denied his right to a fair trial and his day in court because of his counsels' ineffectiveness.

Petitioner, after several failed attempts, Four with appointed counsel, all of which were ineffective for their failure to investigate the record and raise meritorious claims, as well as Four or Five 60(b) Motions filed by others in the District Court Thomas asked this author to help him. Thomas was directed to order his Trial Transcripts (hereinafter as N.T.) in May 2021. The instant matter was discovered after reading the N.T. and another PCRA was filed on or about December 27, 2021. See Pet App 5. Thomas was once again assigned counsel who filed a Turner/Finley letter. See Pet App 6. On June 3, 2022 the PCRA was dismissed. See Pet App 7. Thomas filed his Notice of Appeal to the Superior Court of Pennsylvania and Briefed the matter. See Pet App 8. On March 23, 2023 the appeal was denied. See Pet App 9. Finally, on April 19, 2023 Thomas filed a Petition for Leave to File Petition for Allowance of Appeal Nunu Pro Tunc, which was also Denied on September 5, 2023. See Pet App 10.

FEDERAL DISTRICT COURT

Now, after his Fifth 60(b) Motion, and Appeals in the Court of Appeals for the Third Circuit were Denied. This Petitioner Appeals the Denial of the Third Circuit upholding the District Courts finding. It is worth noting at this time that Thomas has never had an evidentiary hearing.

I. 'NEW'

The district court err when applying an incorrect standard when making its conclusion whether the proffered late testimony of Thomas is 'new'.

The District Court applied a higher standard when analyzing Thomas' Late proffered testimony then that of Schlup and Reeves, concluding that such testimony does not constitute 'new' evidence because it was available at the time of trial. The district court also presented conflicting points of law. In this instant matter the Court relied upon law that was clearly distinguishable from what Thomas' contentions are, and have always been, but they somehow continue to be ignored in what seems to be an effort to establish a rule of law that this court's reasoning and rational in Schlup, and the reasoning and rational in Reeves does not allow. Id at Pet App 2.

The District Court admits the Third Circuit has not addressed whether, under Reeves, testimony that Thomas argues counsel ineffectively failed to present constitutes "new evidence", but stated that it does not apply here. In concluding so, the court relied on Hubbard, 378 F.3d at 340 in where that court concluded that "a defendants own late proffered testimony is not 'new' because it was available at trial. Hubbard merely chose not to present it to the jury...". The district court went on to state that "this court has so ruled since Reeves...that when the petitioner "chose not to testify due to his counsel's accurate legal advice, he cannot now invoke the 'actual innocence gateway' by presenting his own withheld testimony as 'new evidence'" Walker v. March, No. 19-2832, 2022 WL 3598061. At *7 (E.D. Pa. Aug. 22, 2022) certificate of appealability denied sub nom. Walker v. Superintendent Benner Twp. SCI, No. 22-2693, 2023 WL 3836783 (3rd Cir. Jan 4, 2023, cert denied

sub nom. Walker v. Houser, 144 S.Ct. 148 (2023). See Pet App 2 Pgs. 5-6, see also Pet App 3 Pgs.3-5. MOTION FOR RELIEF FROM JUDGEMENT PURSUANT TO FEDERAL RULE OF PPROCEDUE 60(B)(6); Pet App 4. § 7-24. PETITION FOR CERTIFICATE OF APPEALABILITY. The district court relies on when a petitioner "chose not to testify due to his own counsels 'accurate legal advice'... . However, Thomas' counsel admitted per se that his advice to Thomas was not 'accurate when he stated that he files a motion to reopen the trial and put him on the stand.

In the cases the District Court relies on to support its conclusion, not one of the Attorneys recognized their error in advising their client not to testify and then attempt to reopen the evidentiary phase to present their clients testimony as has been demonstrated here that Thomas's counsel had done. Secondly, the fact that Thomas's late proffered testimony was available at trial, is of no importance in this matter for two reasons: 1) Among the new evidence presented in Schlup was an affidavit containing witness statements that were available at trial but wrongly excluded. 2) Schlup and Reeves wasn't about whether the petitioner knew about the evidence before trial. It was about the evidence being available at the time of trial and counsel; failing to present it to the fact finder. It only stands to reason that if the evidence was available at trial, then it is not 'new'. It is merely newly presented. Reeves at 163-64 (3rd Cir. 2018).

Under the limited circumstances in this instant case Schlup and Reeves cannot be read to prohibit 'late proffered testimonial evidence, that was wrongly excluded

at trial from being considered as 'new' evidence for the purpose of the Schlup actual innocence gateway.

II. RELIABLE EVIDENCE

Despite the district courts conclusion that Thomas' late proffered testimonial evidence is not "new" for actual innocence gateway purpose the court did consider whether or not the evidence was 'reliable'. See Pet App 2 Pgs. 6-7.

Here the district court over looked trial counsels conclusion that based on the circumstances at the time of the Charging Conference, Thomas' testimony would be reliable, and is vital to receive the requested instruction of Voluntary Manslaughter-Unreasonable belief or counsel would not have wanted to reopen the trial to have him testify. This is evidenced in the record of the conference by counsel arguing on Thomas' behalf for the instruction, and, though counsel was not fairing well, he then alleges he would file a motion to reopen the trial and put Thomas on the stand. Moreover, the trial court and the Commonwealth must have thought the same. After all it was the Court and the Commonwealth that insisted that Thomas need to have gotten on the stand to testify and that had he "this would not be an issue". Thomas would have gotten the requested instruction

The district Courts reliance on an ill prepared Affidavit without having a hearing where a skilled attorney, prosecutor and the Court could, through extensive questioning elicit much more testimony for the court to enable the court to make an informed decision based on 'all' the facts, and would been in a better place to

determine whether a properly instructed jury or juror, had they been given all the evidence have reasonable doubt. Moreover, although the district court correctly pointed out that some of what Thomas alleges was raised during the trial through other evidence, therefore what Thomas now alleges is not new, and, "that the testimony would, at best have repeated the trial evidence". See Pet App 2. Pgs. 6-7. The district courts conclusion misses the point. For one, the courts conclusion only supports Thomas' claim that the trial court abused its discretion for not giving the requested jury charge, alleging there was no evidence in the record to support the charge. Secondly, despite the fact that the district court points out that the jury did hear supporting evidence through testimony by other sources, what was the jury to do with that evidence. The district court overlooked the fact that according to the trial court the supporting evidence did not exist. See Pet App 5 Pgs. 5-6. Citing to N.T. Vol III. Hence, the courts reason for not giving the jury instruction. Because the evidence did not exist in the record that would make Thomas's Late proffered testimonial evidence 'new'. Also see Pet App 11. N.T. Vol III.

The only evidence the trial court and the Commonwealth was willing to recognize was the testimony presented by Thomas had he gotten on the stand. One only needs to read what transpired in the Judge's Chambers during the conference to understand that the only way Thomas was going the Voluntary Manslaughter-Unreasonable belief was if he got on the stand to testify. The very thing his counsel had advised him not to do. Because he did not get on the stand to testify to get the instruction it left the jury with only one choice. There was no possibility of

compromise. See Matthews v. Johnson, 503 F.2d 339 (3rd Cir. 1974)(en banc) cert denied, 420 U.S. 952, 95 S.Ct. 1336, 43 L.Ed. 2d 430 (1975) citing Schneble v. Florida, 405 U.S. 427, 432, 92 S.Ct. 1056, 31 L.Ed 2d 340 (1972); Chapman v. California, 386 U.S. 18, 24 87 S.Ct. 824, 828, 17 L.Ed. 705 (1967).

REASON FOR GRANTING THE WRIT

This Court should Grant Certiorari to address whether, under limited circumstances, can a Defendants own 'late proffered testimonial evidence constitutes new evidence for purpose of the Schlup actual innocence gateway.

This case may be a truly rare case and therefore should this court weigh in on the matter and give a limited decision, the decision would not create any great burden on the courts below in the future due to the specific evidence needed. i.e., counsels' own admissions. Nor would a limited decision change the remaining prerequisites established by this court for a defendant to pass through the actual innocence gateway.

CONCLUSION

In Reeves v, Fayette, 897 F.3d 154, 163-4; 2018 U.S. App LEXIS 20364, No. 17-1043, July 23, 2018 the court held that "...when a petitioner arrests ineffective assistance of counsel based on counsels' failure to...present to the fact finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constitutes new evidence for the purpose of the Schlup actual innocence gateway".

It is this petitioners' contention that 'late proffered testimonial evidence of a person's actual innocence, that was available at the time of trial and wrongly excluded because of counsels ineffectiveness for failure to present it to the fact-finder constitutes new evidence for the purpose of the actual innocence gateway.