

25-7684

No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL A. DYE - PETITIONER

VS.

STATE OF MICHIGAN - RESPONDENT

FILED
MAY 20 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO
THE THIRD CIRCUIT COURT FOR WAYNE COUNTY MICHIGAN

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Paul A, Dye #173569
Petitioner in Pro Se
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, Michigan 48446

QUESTIONS PRESENTED

- I. Did the state court commit plain error, contrary to *Lafler v. Cooper*, 566 U.S. 156 (2012), with its unreasonable application of the constitutional law as decided by this Court for determining when a defendant is denied effective assistance of counsel during plea negotiations?
- II. Did the state court violate the Fourteenth Amendment by denying Petitioner the process guaranteed him by law for reviewing and evaluating new post conviction evidence showing his actual innocence of the crime?

LIST OF PARTIES

1. Paul A. Dye, Petitioner in Pro Se,
2. The State of Michigan, Respondent.

These are the only two parties to this case and neither are corporate entities.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Paul A. Dye, pursuant to Supreme Court Rule 10(c), respectfully prays this Court grant a writ of certiorari to the Third Circuit Court for the County of Wayne Michigan for reviewing it's unconstitutional decision on the merit of Petitioner's post conviction motion for relief from judgment based on ineffective assistance of counsel during plea negotiations and newly discovered evidence of actual innocence.

OPINION AND ORDERS BELOW

Wayne County Circuit Judge Mark T. Slavens denied Petitioner's successive motion for relief from his criminal judgment. *People v. Dye*, unpublished case #82-005617-01-FC (April 14, 2025). This was the only state court decision addressing the merit of the constitutional claims presented. The opinion and order are attached as Appendix A.

Michigan's Court of Appeals denied Petitioner discretionary leave to appeal from the Third Judicial Circuit Court decision without addressing the merit of the constitutional claims involved. *People v. Dye*, unpublished order, docket #376860 (2025 Mich App LEXIS 9785). That order is attached as Appendix B.

Michigan's Supreme Court denied Petitioner discretionary leave to appeal from the appellate court's decision without addressing the merit of Petitioner's constitutional claims. *People v. Dye*, ___ Mich. ___, ___ N.W.2d ___ (2026 Mich. LEXIS 848). That order is attached as Appendix C.

JURISDICTION

Petitioner filed a successive post conviction motion for relief from judgement based on ineffective assistance of counsel during plea negotiations and newly discovered evidence of actual innocence. The Third Circuit Court for Wayne County Michigan issued an opinion and order denying the motion April 14, 2025 (Appendix A). Petitioner timely filed for leave to appeal which Michigan's Court of Appeals denied December 5, 2025 (Appendix B). Petitioner's timely application for leave to appeal from the state appellate court's decision was denied by Michigan's Supreme Court April 23, 2026 (Appendix C). This Petition for Writ of Certiorari to review the state court's decision, after exhausting the state's appellate review process, is being filed within 90 days after the highest state court's order denying relief. This petition is timely pursuant to Rule 13(1). Jurisdiction of the Court is invoked under 28 U.S.C., sec. 1257(a) and Rule 10(c).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment VI:

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 accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (Emphasis added.)

United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law. (Emphasis added.)

STATEMENT OF THE CASE

After a third trial, Petitioner Paul Allen Dye was convicted by jury in 1990 of first degree murder, second degree murder, and possessing a firearm during a felony in the 1982 shooting deaths of two people.¹ He was sentenced to mandatory life without parole for first degree murder, 23 to 40 years for second degree murder, and a consecutive 2 year term for possessing the firearm.²

The state intermediate appellate court affirmed the convictions and sentences. *People v. Dye*, unpublished #136707, 11/28/95. The state supreme court denied leave to appeal from that decision. *People v. Dye #2*, 453 Mich. 856; 556 N.W.2d 189 (1997). This Court denied certiorari. *Dye v. Michigan*, 520 U.S. 1232, 117 S.Ct. 1828, 137 L.Ed.2d 1034 (1997).

The federal District Court, Eastern District of Michigan, denied Petitioner habeas corpus relief. *Dye v. Hofbauer*, (unpublished #97-cv-74817-DT - 5/28/99). The federal Sixth Circuit Court of Appeals reversed that decision. *Dye v. Hofbauer*,

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1. Petitioner's March 1983 trial ended with the jury hung 11 to 1 for acquittal of murder - the majority voting to convict of accessory after the fact. A second trial jury, after twice declaring itself unable to reach a verdict, convicted Petitioner in September 1983 of first degree murder after hearing the transcribed testimony of three missing immunized witnesses who provided the only evidence inculcating him in the murders. The state supreme court reversed that conviction because the government failed to diligently produce the missing witnesses. *People v. Dye*, 431 Mich. 58, 427 N.W.2d 501 (1988), certiorari denied 488 U.S. 985.
 2. Petitioner has completely served his 40-year second degree murder and firearm possession sentences.

45 Fed. Appx. 428 (6th Cir. 2002). The decision granting habeas relief was reversed on rehearing by a reconfigured appellate panel. *Dye v. Hofbauer*, 111 Fed. Appx. 363 (6th Cir. 2004).

This Court reversed the Sixth Circuit's rehearing decision, remanding for further proceedings. *Dye v. Hofbauer*, 546 U.S. 1, 126 S.Ct. 5, 163 L.Ed.2d 1 (2005). On remand, instead of deciding the rehearing grounds again, the reconstituted appellate panel decided the entire case anew and denied relief on all claims. *Dye v. Hofbauer*, 197 Fed. Appx. 378 (6th Cir. 2006). This Court denied certiorari. *Dye v. Burt*, 522 U.S. 942, 128 S.Ct. 45, 169 L.Ed.2d 245 (2007).

The state trial court denied Petitioner's first motion for relief from judgment April 2, 2013, and denied reconsideration on August 5, 2013. The state appellate court denied leave to appeal. *People v. Dye*, unpublished #318162 (6/14/14). The state supreme court denied leave to appeal. *People v. Dye*, 497 Mich. 952, 858 N.W.2d 49 (2015). This Court denied certiorari. *Dye v. Michigan*, 576 U.S. 1058; 135 S.Ct. 2894, 192 L.Ed.2d 931 (2015).

The United States Sixth Circuit Court of Appeals denied Petitioner permission to file a second habeas corpus petition on the post conviction claims. In *re Dye*, unpublished order (6th Cir. 2015). This Court denied certiorari. *Dye v. Michigan*, 576 U.S. 1058, 136 S.Ct. 1534, 194 L.Ed.2d 620 (2016).

Petitioner filed an October 2024 second motion post conviction motion for relief from judgment in the state trial court. The motion was based on the state's retroactive application of this Court's *Lafler v. Cooper*, 566 U.S. 156 (2012)

ineffective counsel decision, as well as, newly discovered evidence showing actual innocence. The trial court denied relief on these constitutional claims in an April 14, 2025, opinion and order without conducting a requested evidentiary hearing (Appendix A). The state appellate court denied leave to appeal (Appendix B). The state supreme court also denied leave to appeal (Appendix C). Petitioner now seeks a writ of certiorari in this Court on the following grounds:

REASONS FOR GRANTING THE PETITION

- I. The state court committed plain error, contrary to *Lafler v. Cooper*, 566 U.S. 156 (2012), with its unreasonable application of the constitutional law as decided by this Court for determining when a defendant is denied effective assistance of counsel during plea negotiations.

Criminal defendants are entitled to effective assistance of counsel when considering or negotiating a plea agreement. *Lafler v. Cooper*, 566 U.S. 156, 162, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). A defendant must establish the factual predicate for a plea negotiation ineffective assistance claim and show that the outcome would have been different with competent advice. *Lafler* at 163.

Defendant's seeking post conviction relief for plea negotiation ineffective assistance of counsel claims must meet the two prong standard of *Strickland v. Washington*, 466 U.S. 668, 690, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) "that counsel's representation fell below an objective standard of reasonableness", and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Lafler* at 163. Michigan

courts have found Lafler did not create a new rule of law but rather established how the now familiar Strickland test applies to plea negotiations and, thus, retroactively apply in this case. *People v. Walker*, 328 Mich. App. 429, 448, 938 N.W.2d 31 (2019), lv. den. 505 Mich. 1057 (2019).

Defendant's claiming prejudice by rejection of a plea offer on the basis of ineffective assistance of counsel must show:

(1) that but for the ineffectiveness of counsel there is a reasonable probability that the plea offer would have been presented to the court; (2) that the court would have accepted its terms; and (3) that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Lafler at 163-164.

Under these applicable review standards, the state court decided this constitutional question in a manner that is indifferent and contrary to Lafler.

The state court committed plain error, contrary to Lafler, in this case where Petitioner produced sufficient evidence showing both counsel's ineffective performance and its resulting prejudice. Defendant provided the trial court with defense counsel's 2013 sworn affidavit attesting to his deficient performance.³ Counsel described how he revealed to Petitioner a prosecution plea offer but failed to:

3. The trial court claimed Petitioner never provided it with counsel's affidavit (Appendix A, p. 10, fn. 2). Contrary to the state court's claim, the affidavit was previously filed with the court as an attachment to a rehearing motion in 2013. The attached Appendix D was, in fact, obtained from the trial court's file by Petitioner in 2024 - the underlining marks appearing on it were placed there by the trial court itself.

- (1) Calculate and advise Petitioner of the amount of additional time he would have to spend in prison under the plea offer,
- (2) Discuss with Petitioner the chance of him receiving a greater sentence if convicted at trial,
- (3) Advise Petitioner with his opinion regarding the likelihood of success with the jury verses the benefit of obtaining a confirmed sentence and end of the case with the plea offer, and
- (4) Provide Petitioner with his opinion on whether further plea negotiations should have been pursued with the prosecutor. (Appendix D, ¶ 8-11.)

The trial court denied the request for an evidentiary hearing pursuant to *People v. Ginther*, 390 Mich. 436, 212 N.W.2d 922 (1973), preventing Petitioner from showing the necessary prejudice from counsel's admissions of error. *Lafler*, also a Michigan case, was based on factual evidence of prejudice developed at a *Ginther* hearing (566 U.S. at 161).

In this case, the trial court decided the constitutional questions involved by first "assuming counsel failed to accurately advise [Petitioner] regarding the plea" and summarily finding a lack of prejudice because:

Throughout the proceedings, the defendant maintained his actual innocence of the murder charges, based on his claim that Seidel was the perpetrator. If the defendant truly had not committed (or believed he had not committed) any of the crimes, then entering a guilty plea would have entailed committing perjury. . . . It is per se not ineffective for counsel to refrain from seeking to admit perjured testimony, counsel is obligated to prevent a client from committing perjury of which counsel is aware. . . . Accordingly, the defendant's ineffective assistance of counsel claim fails. (Appendix A, citations omitted.)

The trial court's decision is both contrary to this Court's decisions and factually incorrect. This Court ruled in *North*

Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed. 2d 163
(1970):

Thus, while most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty. An individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime. (400 U.S. at 37.)

Alford specifically noted that a plea of *nolo contendere* is not an express admission of guilt but a consent by the defendant to be punished as if he or she were guilty (400 U.S. at 36). In the more recent *Post v. Bradshaw*, 621 F.3d 406 (6th Cir. 2010), the United States Sixth Circuit Court of Appeals found: "There is nothing fundamentally unfair about not requiring the government to prove a case that a defendant, represented by counsel, knowingly, voluntarily, and intelligently says he does not contest." 621 F.3d at 427.

In this case, had the required Ginther hearing been conducted, as in *Lafler*, the record would show that a *nolo contendere* plea option was part of Petitioner's plea negotiating strategy. Therefore, the trial court's finding that Petitioner cannot enter a plea deal without committing perjury is plain error and completely ignores the Court's Alford decision.

Also, the trial court's finding that Petitioner maintained his innocence of the murders charges "throughout the proceeding" is incorrect. The record shows that prior to the first trial, Petitioner appeared before the court's chief judge who would accept his plea to second degree murder with a 30 year sentence.

That proceeding concluded prematurely in confusion over the number of charges involved with the plea. The parties were directed to reach a mutual agreement before bringing the matter to the court again. No subsequent plea negotiations occurred before the first trial.

The first trial ended with the jury hung 11 to 1; the majority voted to acquit Petitioner of murder. *People v Dye*, 431 Mich. 58, 61, 427 N.W.2d 501 (1988). No plea offer was made before Petitioner's second trial. He served six years of a nonparolable life sentence before his conviction was reversed and retrial was ordered. *People v. Dye, supra*.

Prior to the third trial, Petitioner told defense counsel he would consider a reasonable plea offer. After trial began, counsel told him the government offered a plea agreement with a 17 year minimum sentence. Absent any advice from counsel, Petitioner discussed the plea offer with his wife. He rejected the offer after his wife grew distraught over his best guess, without counsel's guidance, of how much additional prison time would be served (Appendix E). A Ginther hearing would have shown that Petitioner would have accepted the plea had counsel properly advised him of the benefits and consequences involved.

Defense counsel's deficient performance resulted in Petitioner's uncounseled decision making process used to reject the government's plea offer. That uncounseled decision resulted in Defendant having currently served 43 years in prison verses the 17 year minimum term offered. Contrary to the trial court's finding, prejudice is apparent from the fact, but for counsel's

deficient performance, there is a reasonable probability Petitioner would have accepted the plea offer and been released from prison 26 years ago. This shows the trial court's recalcitrant decision to completely disregard the Court's Lafler determination of constitutional law.

Prejudice is likewise apparent, contrary to the state court opinion, from defense counsel's failure to calculate the actual time Petitioner would serve under the plea deal. Petitioner's misconduct free behavior in prison entitles him to goodtime reductions on his maximum sentence and 7 disciplinary days per month off his minimum sentence. He was discharged from the 23 to 40 year second degree murder sentence in 2011. Petitioner would have been released before serving the offered 17 years in prison, but counsel never revealed that fact to him.

During Petitioner's third trial, he made a counter offer through defense counsel to the prosecution. He would have provided evidence of another, unrelated murder the actual shooter had committed. Petitioner's sentencing transcript shows the government rejected that plea offer (Appendix F). It is clear from the record that Petitioner was willing, as required by Lafler, to accept a plea deal and the trial court would have accepted it.

SUMMATION

The trial court's failure to conduct an evidentiary hearing prevented Petitioner from making the requisite showing of counsel's deficient performance and the prejudice suffered from it. As a result, Petitioner has been deprived of the ability to

meet his burden of proof on his ineffective assistance of counsel claim. This was plain error by the trial court based on an unreasonable application of law as determined by this Court in *Lafler v. Cooper*, supra. For these reasons, Petitioner respectfully requests that the Court GRANT him a writ of certiorari, VACATE the state court's unconstitutional decision, and REMAND for further proceedings consistent with the Court's decisions of law.

- II. The state court violated the Fourteenth Amendment by denying Petitioner the process guaranteed him by law for reviewing and evaluating new post conviction evidence showing his actual innocence of the crime.

Through attorney Michael D. Wiseman, David Davis provided Petitioner with a sworn affidavit revealing that James Dawson, one of three key immunized witnesses in the case, admitted lying at trial about Petitioner's involvement in the murders. Davis's affidavit describes Dawson's response to questions about why he told on Petitioner:

[Dawson] said he didn't want to say anything to the police but he ended up saying [Petitioner] killed those two women so he wouldn't go to jail. [Dawson] said the police threatened to charge him with murder and a firebombing if he didn't say [Petitioner] killed those people. [Dawson] said the other guys involved had already said [Petitioner] did it so he lied too and said [Petitioner] did it. (Appendix G, ¶ 5.)

In federal habeas corpus proceedings, when considering actual innocence claims in the context of a request for an evidentiary hearing, the reviewing court must consider all the evidence, old and new, in making its probablistic determination

about what a reasonable juror would do. *House v. Bell*, 547 U.S. 518, 537-538, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006). Post conviction evidentiary hearings are also employed by Michigan for resolving new trial motions based on newly discovered evidence. *People v. Anderson*, 513 Mich. 955, 998 N.W.2d 692 (2024). In that context, regard shall be given to credibility findings only when there was a special opportunity for a trial court to judge the credibility of witnesses who appear before it. *People v. Johnson*, 502 Mich. 541, 565, 918 N.W.2d 676 (2018). Petitioner was denied these analytical procedural processes in this case.

Petitioner was permitted to file for post conviction relief under Michigan Court Rule (MCR) 6.502(G)(2)(b) because his "claim of new evidence was not discovered before the first such motion was filed." By passing this gateway threshold, the post conviction review court was required to resolve whether Petitioner was entitled to relief under Michigan Court Rule 6.508(D).⁴ The following four prong test implements the *House v. Bell* factors in Michigan for analyzing new evidence in post conviction proceedings to determine relevancy:

(1) the evidence itself, not merely its materiality, was newly discovered, (2) the newly discovered evidence was not cumulative, (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial, and (4) the new trial evidence makes a different result probable on retrial. *People v. Cress*, 468 Mich. 678, 692, 664 N.W.2d 174 (2003)

4. This Court recognizes the constitutional necessity of employing state post conviction procedures as required due process for exhausting constitutional claims in state courts. *Rhims v. Weber*, 544 U.S. 269, 274, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005); *Philer v. Ford*, 542 U.S. 225, 230-231, 124 S.Ct. 2441, 159 L.Ed.2d 338 (2024).

In this case, the trial court accepted that Petitioner met the first three Cress prongs and moved directly to analyzing the new evidence under the fourth prong. Instead of conducting a requested evidentiary hearing, however, the trial court employed personal opinions to evaluate whether Davis's new evidence would make a different result probable on retrial (Appendix A, pp. 5-7). As a result, the trial court found that Davis's affidavit lacked an exculpatory nature because:

1. Davis had no personal knowledge of events in the case,
2. Davis is not an eyewitness in the case,
3. Davis did not know Petitioner or the three immunized witnesses in 1983 when the case began (James Dawson, Steven Stever, and Bruce Seidel),
4. The evidence presented by Davis is hearsay regarding Dawson, and double hearsay regarding Seidel and Stever, and
5. Davis met with Dawson 31 years after Petitioner's trial, conviction and sentence. (Appendix A, pp. 6-7).

The trial court made these findings, some incorrect, based on questionable aspects it found with Davis's sworn affidavit, not on tangible witness credibility factors revealed by the old evidence or from the witness stand.

The new evidence's exculpatory nature is not dependent on Davis's personal knowledge of the case or his being an eyewitness. Reasonable jurors who would receive Davis's live testimony, and evaluate it along with the other evidence, could believe his direct impeachment of the government's immunized witnesses (the only evidence inculcating Petitioner) and vote to

acquit him of murder.⁵ The trial court denied Petitioner due process by not receiving and assessing Davis's live testimony from the witnesses stand at an evidentiary hearing. Absent this crucial means of assessment, in conjunction with the other evidence from trial, there was no way for the trial court to properly assess its exculpatory nature.

James Dawson was the source of both his original false testimony and his recantation. It is reasonable to believe that Dawson's guilty conscience caused him to admit to Davis that he testified falsely against Petitioner. A witness's impeaching statements recanting their prior testimony are admissible on retrial in Michigan. *People v. Johnson*, 502 Mich. at 577. Thus, the trial court denied Petitioner the Sixth Amendment constitutional right to confront and impeach a witness's prior testimony. *Blackston v. Rapelle*, 780 F.3d 340, 352-353 (6th Cir. 2015).

The trial judge was a successor judge who did not preside over any portion of Petitioner's multi-trial proceedings. His only knowledge of the case was based on those records. He had no

5. Eleven of Petitioner's first trial jurors did not believe the lying immunized witnesses's testimony. His second trial jury twice declared itself hung before ultimately, after further court instructions, convicting him of murder based on prosecutorial reading of the transcribed immunized witnesses's first trial testimony. *People v. Dye*, 431 Mich. 58, 61, 427 N.W.2d 501 (1988). One juror announced during polling at Petitioner's third trial that she did not vote to find him guilty, but then changed her vote in open court under direct one-on-one questioning by the judge. *Dye v. Hofbauer*, 197 Fed. Appx. 378, 384-385 (6th Cir. 2006).

personal interactions with the evidence of the case on which to base his decision. As a result, it was plain error for the trial court to not grant the requested evidentiary hearing at which the exculpatory and credible nature of the new evidence could have been demonstrated.

Davis's new impeachment evidence is exculpatory because it directly contradicts the only material evidence inculcating Petitioner in the murders. As a result, contrary to the trial court's personal view, it could make a different result probable on retrial. The state court's findings regarding the new evidence, without Davis appearing on the witness stand, is plain error which denied Petitioner the procedural process to which he was due by law and the United States Constitution's Fourteenth Amendment.

SUMMATION

Absent the required evidentiary hearing, the trial court prevented Petitioner from showing his actual innocence in order to obtain relief from his judgment of conviction. Thus, Petitioner was denied due process of law necessary for showing his actual innocence in violation of the Fourteenth Amendment Due Process Clause. For these reasons, Petitioner respectfully requests that the Court GRANT him a writ of certiorari, VACATE the state court's unconstitutional decision, and REMAND for further proceedings consistent with the Court's decision.

CONCLUSION

The state court has decided important constitutional claims in a way that conflicts with relevant decisions of the Court. Wherefore, Petitioner Paul A. Dye respectfully requests that the Court GRANT this Petition for Writ of Certiorari and decided the constitutional claims presented, or alternatively, GRANT a writ of certiorari, VACATE the state court decision, and REMAND for further proceedings consistent with the Court's decision.

Respectfully submitted,



Paul A. Dye #173569
Petitioner in Pro Se
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, Michigan 48446

Date: June 11, 2026