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Ex parte Chabot
Court of Criminal Appeals of Texas. December 9, 2009 300 S.W.3d 768 (Approx. 8 pages)

Ex parte Clay Reed CHABOT, Applicant.

No. AP-75,940.
Dec. 9, 2009.

Synopsis

Background: Defendant filed a subsequent application for writ of habeas corpus following the affirmance of murder conviction and life sentence and the denial of initial habeas application. The 203rd Judicial District Court, Dallas County, Thomas Thorpe, J., recommended relief.

Holdings: The Court of Criminal Appeals, Womack, J., held that:

- 1 due process claim involving the alleged unknowing presentation of perjured testimony was subject to harmless error analysis; and
- 2 defendant's due process rights were violated by state's unknowing presentation of accomplice witness's perjured testimony.

Relief granted.

Keller, P.J., and Keasler, J., concurred in the judgment.

West Headnotes (8)

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1 Habeas Corpus Change in facts or law; new evidence
Due process claim, as asserted in subsequent application for writ of habeas corpus, that murder conviction was based on a foundation of perjury by state's chief witness was not procedurally barred, where, at time of first application, neither the DNA testing that purportedly established falsity of witness's testimony nor the statute authorizing a motion by a convicted person for forensic DNA testing was available. U.S.C.A. Const.Amend. 14; Vernon's Ann.Texas C.C.P. arts. 11.07, § 4(a)(1), 64.01 et seq.

2 Cases that cite this headnote

2 Habeas Corpus Perjured or falsified evidence; recantation
Due process claim alleging that state unknowingly presented perjured testimony to obtain conviction was subject to harmless error analysis in habeas corpus proceeding. U.S.C.A. Const.Amend. 14.

15 Cases that cite this headnote

3 Constitutional Law Use of Perjured or Falsified Evidence

SELECTED TOPICS

Habeas Corpus

- Jurisdiction, Proceedings, and Relief
 - Assertedly False Testimony of the Key Prosecution Witness
 - Record Proper of Trial Court Import Verity

Criminal Law

- Review
 - Petitioner Bears the Burden of Proof

Secondary Sources

§ 137. Appeal of federal court habeas corpus proceeding

38 Tex. Jur. 3d Extraordinary Writs § 137
...In a habeas corpus proceeding before a federal district court judge, the final order is subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held. There is n...

Federal Habeas Corpus Practice

20 Am. Jur. Trials 1 (Originally published in 1973)
...The increasing resort to the federal courts by state prisoners, claiming to be unlawfully held by state authorities, for release on habeas corpus, has been described as a "tidal wave." In 1962, a total...

Appendix A. U.S. Supreme Court Decisions Construing Provisions of the Federal Habeas Corpus Act Enacted or Amended By Title I of the Antiterrorism and Effective Death Penalty Act of 1996

Federal Postconviction Remedies & Relief Handbook with Forms Appendix A
...Felker v. Turpin, 518 U.S. 651, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996) (death sentence case; on April 24, 1996, the President signed the AEDPA into law; Title I of the AEDPA contained a series of am...

[See More Secondary Sources](#)

Briefs

BRIEF FOR PETITIONER

1999 WL 459574
Williams v. Taylor
United States Supreme Court Petitioner's Brief.
June 28, 1999
...FN* Counsel of Record The Fourth Circuit's opinion is Williams v. Taylor, 163 F.3d 860 (4th Cir. 1998) (Joint Appendix ("JA") 489.) The District Court's opinion is Williams v. Pruett, CA-97-1527-A (Apr...

BRIEF OF AMICI CURIAE STATES OF CALIFORNIA, ALABAMA, ALASKA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, IDAHO, ILLINOIS, KANSAS, LOUISIANA, MARYLAND,

Criminal Law 🔑 Use of False or Perjured Testimony

Defendant's due process rights were violated by state's unknowing presentation of perjured testimony in murder prosecution, where postconviction DNA testing conclusively showed that accomplice witness perjured himself by denying that he had sexually assaulted victim, his testimony provided the only direct evidence that defendant sexually assaulted and killed victim, state acknowledged that it predicated its trial theory on accomplice witness's testimony, and DNA evidence refuted not only his testimony but also that of another witness who characterized accomplice witness as a nonviolent person who would never hurt a woman. U.S.C.A. Const.Amend. 14.

9 Cases that cite this headnote

4 Criminal Law 🔑 Presentation of Evidence

The knowing use of perjured testimony is a trial error that is subject to a harmless error analysis.

3 Cases that cite this headnote

5 Habeas Corpus 🔑 Weight and sufficiency in general

Under applicable harmless error standard, applicant for habeas corpus relief has the burden to prove by a preponderance of the evidence that the error contributed to his conviction or punishment.

12 Cases that cite this headnote

6 Habeas Corpus 🔑 Conduct of Hearing

In postconviction review of habeas corpus applications, the Court of Criminal Appeals is the ultimate factfinder.

2 Cases that cite this headnote

7 Habeas Corpus 🔑 Conclusiveness of Prior Determinations

The convicting court is the original factfinder on a postconviction application for writ of habeas corpus, and the Court of Criminal Appeals generally defers to and accepts the convicting court's findings of fact and conclusions of law when they are supported by the record.

6 Cases that cite this headnote

8 Habeas Corpus 🔑 Conclusiveness of Prior Determinations

The Court of Criminal Appeals may exercise its authority to make contrary or alternative findings and conclusions when independent review of the record reveals that the trial judge's findings and conclusions on a postconviction application for habeas corpus relief were not supported by the record. Vernon's Ann.Texas C.C.P. art. 11.07.

Attorneys and Law Firms

*769 Bruce Anton, Sorrels, Udashen, & Anton, Dallas, TX, for Appellant.

Michael Logan Ware, Jeffrey L. Van Horn, State's Attorney, Austin, for State.

Opinion

WOMACK, J., delivered the opinion of the Court, in which MEYERS, PRICE, JOHNSON, HERVEY, HOLCOMB, and COCHRAN, JJ., joined.

This is a post-conviction application for a writ of habeas corpus brought pursuant to Article 11.07 of the Texas Code of Criminal Procedure. We agree with the convicting court's

MASSACHUSETTS, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, WASHINGTON, AND WEST VIRGINIA IN SUPPORT OF RESPONDENTS

1999 WL 682881
Williams v. Taylor
United States Supreme Court Amicus Brief.
August 20, 1999

...FN*Counsel of Record Amici states' interests are served by resolving the questions presented as to the interpretation of the "new, highly deferential" standard of review in 28 U.S.C. section 2254(d). A...

BRIEF OF RESPONDENT

1999 WL 642451
Williams v. Taylor
United States Supreme Court Respondent's Brief.
August 20, 1999

...Shortly before 2:00 a.m. on Sunday, November 3, 1985, Harris Thomas Stone was found dead on his bed in his residence on Henry Street in Danville, Virginia. There was no sign of a struggle. Stone was fu...

See More Briefs

Trial Court Documents**The Texas Taxpayer & Student Fairness Coalition v. Williams**

2014 WL 4254969
The Texas Taxpayer & Student Fairness Coalition v. Williams
District Court of Texas, Travis County
August 28, 2014

...Based on the testimonial and documentary evidence in the record, this Court makes the following findings of fact and conclusions of law: This Court held a forty-five day trial between October 22, 2012 ...

TCA BUILDING COMPANY, Plai Counter Defendant, v. ENTECH Delaware Corporation; Carol G Defendants; and Northwestern Resources Company, a Montana Corporation, Defendants and Counter Plaintiffs, v. Michael A. McLaughlin and Donald McLaughlin, Third Party Defendants.

1997 WL 34615786
TCA BUILDING COMPANY, Plaintiff and Counter Defendant, v. ENTECH, INC., a Delaware Corporation; Carol G. Embry, Defendants; and Northwestern Resources Company, a Montana Corporation, Defendants and Counter Plaintiffs, v. Michael A. McLaughlin and Donald McLaughlin, Third Party Defendants.
District Court of Texas, Travis County
February 24, 1997

...On the 4th day of September, 1996, came on to be heard the Plaintiff's Motion for Partial Summary Judgment, filed June 6, 1996, and the Defendants' Motion for Summary Judgment on All Claims, filed July...

Alejandro GARCIA, Plaintiff, v. COUNTY OF EL PASO, and Lec Samaniego, Defendants.

2002 WL 34100930
Alejandro GARCIA, Plaintiff, v. THE COUNTY OF EL PASO, and Leo Samaniego, Defendants.
District Court of Texas,

recommendation to grant relief.

The applicant was convicted of murder and sentenced to life imprisonment. On appeal, he alleged that the evidence was insufficient to corroborate the testimony of accomplice witness Gerald Pabst and that the trial court erred in admitting evidence of extraneous offenses. The Fifth Court of Appeals affirmed his conviction.¹

The applicant filed his first application for habeas relief in 1991, which we denied.

In this application, the applicant brings eight claims,² among them that Pabst, the State's chief witness, presented perjured testimony at trial, which would make his conviction a denial of due process as embodied in the Fourteenth Amendment to the United States Constitution.³ We grant relief.

Facts

On April 19, 1986, the victim, Galua Self Crosby, was found in her bed, in the home she shared with her husband, where she had been bound, gagged, sexually assaulted, and shot three times in the head.

According to Pabst's testimony at the applicant's trial, he and the applicant had gone to the victim's home looking for her husband about a recent drug deal. Although Crosby was home alone, the applicant went inside the house and demanded drugs and money. When the victim produced neither, the applicant threatened her with a gun. In his testimony, Pabst claimed that he had wanted to leave, that he repeatedly told the applicant that they should leave, that the applicant refused, and that he himself did not leave because he was scared of the applicant. The applicant told Crosby to go into the bedroom, where he made her lie face down on the bed, and ordered Pabst to tie her feet while he tied her hands. He then told Pabst to disconnect the television. While *770 disconnecting the television in another room, Pabst heard Crosby say "No" and then heard gunshots from the bedroom. Pabst ran out of the house, and eventually the applicant joined him.

Applicant's Claim

The current application is based on the June 28, 2007 results of DNA testing done on the victim's vaginal slides, ordered under Code of Criminal Procedure Chapter 64. The applicant claims that this new DNA evidence establishes that Pabst's trial testimony was perjured. He points to the fact that "Pabst denied sexually assaulting or harming the victim in any way, claimed that he acted only under duress, and insisted that he was in another room of the house when these violent acts occurred." The DNA evidence, he says, contradicts this testimony because it excludes both the applicant and the victim's husband but matches Pabst's DNA profile. It shows, "at a bare minimum, that Pabst perjured himself when he claimed that he had no sexual contact with the victim, and eviscerates his credibility as a witness."

The applicant contends that jurors were specifically instructed that they were legally required to find Pabst's testimony true in order to convict the applicant. He also argues that Pabst provided the only evidence that directly placed him at the crime scene and that, "[g]iven the undeniable centrality of Pabst's testimony to the case as tried in 1986, that jury could not—and would not—have convicted Mr. Chabot without substantial reliance on Pabst's testimony and, accordingly, without first finding him to have been a truthful witness." He further argues that no rational jury would have found Pabst to be truthful had they known about the DNA evidence.

The applicant claims that, under *Ex parte Carmona*,⁴ due process is violated when a conviction based on (in his words) "a foundation of perjury by the State's chief witness" is allowed to stand. He maintains that here, due process requires that his conviction be vacated and a new trial ordered.

Article 11.07, Section 4(a)(1) Requirements

1 Under Texas law, this court may not consider the merits of or grant relief on a subsequent application for a writ of habeas corpus unless:

the application contains sufficient specific facts establishing that the current

October 22, 2002

...On this day, the Court considered the "Motion for Reconsideration of Defendants' [sic] Motion for Summary Judgment [sic]" ("Motion to Reconsider") filed by Defendant County of El Paso ("Defendant El Pas...

See More Trial Court Documents

claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application.⁵

The applicant did not raise this due-process claim in his first application for habeas relief. Nor could he have brought the claim. At the time he filed his first habeas application in 1991, neither the DNA testing nor Code of Criminal Procedure Chapter 64 was available as an avenue for relief. The applicant's due-process claim therefore meets the statutory requirements of Article 11.07, Section 4(a)(1) and is not procedurally barred.

Analysis of Due Process Claim

2 3 This court has held that the Due Process Clause of the Fourteenth Amendment is violated where the State knowingly uses perjured testimony to obtain a *771 conviction.⁶ Is due process violated when the State has unknowingly presented perjured testimony? A plurality in *Carmona* held that a community-supervision revocation based solely on perjured testimony, unknown to the State at the time of revocation, to have violated the applicant's due process rights.⁷

4 5 The knowing use of perjured testimony is a trial error that is subject to a harmless error analysis.⁸ Under the applicable standard, the "applicant has the burden to prove by a preponderance of the evidence that the error contributed to his conviction or punishment."⁹ Although the present case involves unknowing, rather than knowing, use of testimony, we see no reason for subjecting the two types of errors to different standards of harm.

In its response to the current application, the State conceded that Pabst presented perjured testimony at trial (as proven by the 2007 DNA test results), that Pabst was the State's primary witness whose testimony was critical to the State's case against the applicant, that Pabst's false testimony more likely than not contributed to the applicant's conviction and punishment, and that the applicant is entitled to relief in the form of a new trial.

The State submitted Proposed Findings of Fact and Conclusions of Law, which were adopted by the convicting court without a hearing. The Findings and Conclusions include the following:

- The 2007 DNA test results link Pabst to the vaginal sexual assault of Galua Self Crosby. Thus, they establish the falsity of Pabst's trial testimony denying that he sexually assaulted Ms. Crosby. They also establish the falsity of other evidence and argument offered by the State that Pabst was a non-violent person who could not have harmed Ms. Crosby.
- The State presented Pabst's testimony in the guilt phase of applicant's trial. Thus, the State used the false testimony against applicant.
- Although the State presented other evidence linking applicant to Ms. Crosby's sexual assault and murder, Pabst's testimony was crucial to the State's case at applicant's trial. The State predicated its trial theory on Pabst's testimony that he only helped bind Ms. Crosby and that applicant alone sexually assaulted and shot her. The State supported this theory by presenting the testimony of other witnesses who characterized Pabst as a non-violent person who would not harm a woman. Furthermore, Pabst's false testimony was the only purported eyewitness account of the sexual assault and murder of Ms. Crosby; applicant testified, but he denied that he murdered or sexually assaulted Ms. Crosby and claimed he was not even present during the assault and murder. In light of the foregoing, Pabst's false testimony more likely than not contributed to the applicant's conviction and punishment.
- Applicant argues, alternatively, ... that the State should have known of the false nature of Pabst's testimony at the time it was presented at trial. In light of *Carmona*, however, because Pabst's perjured testimony was crucial to the case presented by the State and because the false nature of Pabst's *772 testimony is now undisputed, this Court need not reach the issue of the State's knowledge.

- Based on the foregoing, the Court finds applicant has proven by a preponderance of the evidence that his federal ... constitutional due process rights were violated.
- The Court concludes applicant is unlawfully restrained and confined and recommends that the Court of Criminal Appeals grant applicant relief on his false evidence claim by reversing and remanding to the Court for a new trial.¹⁰

6 7 8 In post-conviction review of habeas corpus applications, this court is the ultimate factfinder.¹¹ The convicting court is the "original factfinder," and the Court of Criminal Appeals generally defers to and accepts the convicting court's findings of fact and conclusions of law when they are supported by the record.¹² "When our independent review of the record reveals that the trial judge's findings and conclusions are not supported by the record, we may exercise our authority to make contrary or alternative findings and conclusions."¹³

In this case, the convicting court's findings and conclusions are supported by the record.

The DNA test results conclusively link Pabst to Crosby's sexual assault and therefore show that he perjured himself at the applicant's trial. Pabst's testimony provided the only direct evidence that the applicant sexually assaulted and killed Crosby. The State acknowledges that Pabst's testimony was critical to its case and that it predicated its trial theory on his testimony. The DNA test results refute not only Pabst's testimony itself but also that of another State's witness who characterized Pabst as a non-violent person who would never hurt a woman, testimony which lent credence to Pabst's version of events.

Further, the convicting court, with the support of the State, has found that the applicant's due-process rights have been violated. Based on our decision in *Carmona*, we agree with the convicting court that the circumstances of the present case merit a finding that the applicant's due-process rights were violated, notwithstanding the absence of the State's knowledge of the perjured testimony at the time of trial.

In light of the foregoing, we agree that it is more likely than not that Pabst's perjured testimony contributed to the applicant's conviction and punishment. Because the convicting court's findings and conclusions are supported by the record, this court accepts them. Having so found as to the applicant's first claim, we need not reach his remaining claims.

Relief from the judgment of conviction is granted. The applicant is remanded to the custody of the Sheriff of Dallas County to answer the charge set out in the indictment.

KELLER, P.J., and KEASLER, J., concurred in the judgment.

All Citations

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Footnotes

- 1 *Chabot v. State*, No. 05–86–01168–CR (Tex.App.-Dallas Oct. 27, 1987, pet. ref'd) (not designated for publication).
- 2 The remaining claims include allegations of actual innocence and violations of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
- 3 The applicant also requested relief under the due-course-of-law provision in Article I, Section 13 of the Texas Constitution, as well as "related statutes." Due to our disposition of the applicant's claim under the United States Constitution, we do not address his state-law claims.
- 4 185 S.W.3d 492 (Tex.Cr.App.2006) (plurality opinion).
- 5 CODE CRIM. PROC. art. 11.07, § 4(a)(1).
- 6 *Ex parte Fierro*, 934 S.W.2d 370 (Tex.Cr.App.1996); *Ex parte Castellano*, 863

- S.W.2d 476 (Tex.Cr.App.1993).
- 7 *Carmona*, 185 S.W.3d 492.
- 8 *Fierro*, 934 S.W.2d at 374.
- 9 *Id.*, at 374–75.
- 10 Internal citations omitted.
- 11 *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex.Cr.App.2008).
- 12 *Ibid.*
- 13 *Ibid.*

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