

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

In re Kareem Jackson

No. 21-3102, United States Court of Appeals for the Sixth Circuit (September 2, 2021)

SUMMARY

The Sixth Circuit held that a death-row prisoner's habeas petition raising newly discovered Brady and Napue claims was "second or successive" under 28 U.S.C. § 2244(b), rejecting the argument that the claims were unripe until disclosure. The court granted leave to file the successive petition, finding a prima facie showing that suppressed eyewitness statements and evidence of coerced testimony could establish by clear and convincing evidence that no reasonable factfinder would have convicted him. The concurrence argued that *In re Wogenstahl* was wrongly decided and that such claims should not be subject to § 2244(b) gatekeeping, while the dissent contended the petitioner failed to meet the prima facie standard. The case addresses the interplay between AEDPA's restrictions on successive petitions and claims of prosecutorial misconduct under *Brady* and *Napue*.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	BOGGS; MOORE; CLAY
JURISDICTION	Federal
DECIDED	September 2, 2021
DOCKET	21-3102
DISPOSITION	other
PROCEDURAL POSTURE	On motion for leave to file a second or successive habeas corpus petition and on motion to remand.
STANDARD OF REVIEW	Prima facie showing under 28 U.S.C. § 2244(b)(3)(C) – sufficient allegations of fact together with documentation to warrant fuller exploration in the district court.
PRECEDENTIAL VALUE	Published
PARTIES	Kareem Jackson v. Respondent

TOPICS

[habeas corpus](#) [criminal procedure](#) [constitutional law](#) [evidence](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

Criminal Law

Post-Conviction Relief

Habeas Corpus

QUESTIONS PRESENTED

1. Whether Jackson's motion to remand should be denied because his habeas petition is 'second or successive' under 28 U.S.C. § 2244(b).
2. Whether Jackson has made a prima facie showing that his Brady and Napue claims satisfy the requirements of § 2244(b)(2)(B) to authorize the filing of a second or successive petition.

HOLDINGS

1. The petition is second or successive under *In re Wogenstahl*, 902 F.3d 621 (6th Cir. 2018), because the facts underlying the claims had already occurred when he filed his first petition, even though he was unaware of them.
2. Jackson has made a prima facie showing that the factual predicate for his claims could not have been discovered previously through due diligence and that the facts, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty.

KEY QUOTATIONS

“We DENY Jackson’s motion to remand and GRANT him permission to file the proposed petition as to his Brady and Napue claims.” (7)

“In Wogenstahl, we held that a habeas claim was ripe if the facts underlying the claim 'had already occurred when he filed his petition, although Wogenstahl was unaware of these facts.'” (3)

“Jackson has also met his obligation to make a prima facie showing under § 2244(b)(2)(B)(ii) that 'the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.'” (5)

“I therefore respectfully dissent from the grant of authorization to file a second or successive petition.” (14)

FACTUAL BACKGROUND

Jackson was convicted of six counts of aggravated murder and sentenced to death. He claims the prosecution suppressed evidence: a statement from key eyewitness Rebecca Lewis that her initial description of the suspect did not match Jackson but matched a shorter alternative suspect, 'Little Bee'; and a statement from a neighbor supporting the inference that Little Bee committed the murders. Additionally, Jackson claims that witness Ivana King was coerced by police into testifying that Jackson confessed to the murders. These facts underlie his Brady and Napue claims.

PROCEDURAL HISTORY

Jackson was convicted of aggravated murder and sentenced to death in Ohio. He exhausted direct appeal and state post-conviction remedies, then filed a federal habeas petition that was denied. He previously sought leave to file a successive petition, which was denied. In August 2020, he filed a new habeas petition in the district court asserting Brady, Napue, and Supremacy Clause claims. The warden moved to transfer the action as a successive petition, and the district court granted the transfer. Jackson then moved this court for leave to file a successive petition and also moved to remand, arguing that his petition was not second or successive.

DISPOSITION

other

CASES CITED

- Jackson v. Bradshaw, 681 F.3d 753 (6th Cir. 2012)
- In re Kareem Jackson, No. 15-4055 (6th Cir. Jan. 13, 2016) (order)
- Brady v. Maryland, 373 U.S. 83 (1963)
- Napue v. Illinois, 360 U.S. 264 (1959)
- Panetti v. Quarterman, 551 U.S. 930 (2007)
- Stewart v. Martinez-Villareal, 523 U.S. 637 (1998)
- In re Wogenstahl, 902 F.3d 621 (6th Cir. 2018) (per curiam)
- Darrah v. City of Oak Park, 255 F.3d 301, 310 (6th Cir. 2001)
- In re Jones, 652 F.3d 603, 605 (6th Cir. 2010)
- Hill v. Mitchell, 842 F.3d 910, 925 (6th Cir. 2017)
- Freed v. Thomas, 976 F.3d 729, 738 (6th Cir. 2020)
- In re Lott, 366 F.3d 431, 433 (6th Cir. 2004)
- Bennett v. United States, 119 F.3d 468, 469 (7th Cir. 1997)
- In re McDonald, 514 F.3d 539, 545 (6th Cir. 2008)
- Banks v. Dretke, 540 U.S. 668, 691 (2004)
- Strickler v. Greene, 527 U.S. 263, 281-82 (1999)
- Hughbanks v. Hudson, 2 F.4th 527, 536 (6th Cir. 2021)
- House v. Bell, 547 U.S. 518, 552 (2006)
- In re Keith, No. 18-3544, 2018 WL 8807240 (6th Cir. Oct. 26, 2018)
- United States v. Fields, 763 F.3d 443, 463 (6th Cir. 2014)
- Carter v. Mitchell, 443 F.3d 517, 535 (6th Cir. 2006)
- In re Bowen, 436 F.3d 699, 704 (6th Cir. 2006)
- Slack v. McDaniel, 529 U.S. 473, 486 (2000)
- McCleskey v. Zant, 499 U.S. 467, 489 (1991)
- Ford v. Wainwright, 477 U.S. 399, 409-10 (1986)
- In re Coley, 871 F.3d 455, 457-58 (6th Cir. 2017)

- *Magwood v. Patterson*, 561 U.S. 320, 335 (2010)
- *Scott v. United States*, 890 F.3d 1239, 1256-58 (11th Cir. 2018)
- *Long v. Hooks*, 972 F.3d 442, 486-88 (4th Cir. 2020) (en banc)
- *Brooks v. Tennessee*, 626 F.3d 878, 894-95 (6th Cir. 2010)
- *In re Stansell*, 828 F.3d 412, 415-19 (6th Cir. 2016)
- *State ex rel. Caster v. Columbus*, 89 N.E.3d 598 (Ohio 2016)
- *State v. Jackson*, 2019 WL 6615076 (Ohio Ct. App. Dec. 5, 2019)
- *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)

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