

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Gregory L. Brown v. W. Muniz

Gregory L. Brown v. W. Muniz, 889 F.3d 661 (9th Cir. 2018) · No. No. 16-15442 · Decided May 8, 2018

SUMMARY

The Ninth Circuit held that Brady claims are subject to AEDPA's second-or-successive gatekeeping requirements because the factual predicate—the state's failure to disclose exculpatory evidence before trial—exists at the time of the first habeas petition. The court affirmed dismissal of Brown's second-in-time habeas petition and denied his application for leave to file, finding that the alleged Brady evidence (impeachment material on three officers with tangential involvement) did not establish actual innocence by clear and convincing evidence under 28 U.S.C. § 2244(b)(2)(B).

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Consuelo M. Callahan; Carlos T. Bea; Jane A. Restani
JURISDICTION	Federal
DECIDED	May 8, 2018
DOCKET	No. 16-15442
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's dismissal of a second-in-time habeas petition as second or successive for lack of jurisdiction.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Gregory L. Brown v. W. L. Muniz

TOPICS

[habeas corpus](#) [criminal procedure](#) [fourteenth amendment](#) [due process](#) [evidence](#)

PRACTICE AREAS

[Criminal Law](#) [Habeas Corpus](#)

QUESTIONS PRESENTED

1. Whether a second-in-time habeas petition based on a Brady claim is subject to AEDPA's second or successive gatekeeping requirements.
2. Whether Brown made a prima facie showing of actual innocence by clear and convincing evidence.

HOLDINGS

1. Brady claims are subject to AEDPA's second or successive gatekeeping requirements because the factual predicate supporting a Brady claim – the state's failure to disclose exculpatory evidence before trial – exists at the time of the first habeas petition.
2. Brown fails to make a prima facie showing of actual innocence because the alleged Brady material regarding officers Hockett, Hutchings, and Gin is not material and does not undermine confidence in the verdict.

KEY QUOTATIONS

“We conclude that Brady claims are subject to AEDPA's second or successive gatekeeping requirements because the 'factual predicate [supporting a Brady claim] existed at the time of the first habeas petition.'” (at 14)

“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.” (at 26-27)

“a factual predicate accrues at the time the constitutional claim ripens—i.e., when the constitutional violation occurs. In the case of a Brady claim, the violation occurs at the time the State should have disclosed the exculpatory evidence—i.e., before trial.” (at 22-23)

FACTUAL BACKGROUND

Brown was convicted of attempted murder and conspiracy to commit murder for the shooting of Robin Williams. The prosecution's evidence included a threatening note, Brown's motive to prevent Williams from testifying, and his presence before the shooting. The defense presented exculpatory evidence, including lack of forensics, impeachment of Williams, and other suspects. After Brown's initial federal habeas petition was denied, the San Francisco District Attorney's Office disclosed potential Brady material regarding three police officers (Hockett, Hutchings, Gin), who had prior misconduct but were not central to the case. Brown then filed a second-in-time habeas petition, arguing that this material was exculpatory.

PROCEDURAL HISTORY

Brown filed a second-in-time habeas petition under 28 U.S.C. § 2254, alleging Brady violations based on previously undisclosed evidence. The district court dismissed the petition without prejudice for lack of jurisdiction, concluding that it was second or successive and that Brown had not obtained authorization from the Ninth Circuit. The district court granted a Certificate of Appealability on the question of whether the petition was second or successive. Brown appealed.

DISPOSITION

affirmed

CASES CITED

- Brady v. Maryland, 373 U.S. 83 (1963)
- Panetti v. Quarterman, 551 U.S. 930 (2007)
- Magwood v. Patterson, 561 U.S. 320 (2010)
- United States v. Buenrostro, 638 F.3d 720 (9th Cir. 2011)
- Gage v. Chappell, 793 F.3d 1159 (9th Cir. 2015)
- United States v. Lopez, 577 F.3d 1053 (9th Cir. 2009)
- Slack v. McDaniel, 529 U.S. 473 (2000)
- Stewart v. Martinez-Villareal, 523 U.S. 637 (1998)
- Felker v. Turpin, 518 U.S. 651 (1996)
- Harrington v. Richter, 562 U.S. 86 (2011)
- Davis v. Ayala, 135 S. Ct. 2187 (2015)
- Turner v. United States, 137 S. Ct. 1885 (2017)
- Strickler v. Greene, 527 U.S. 263 (1999)