In the Supreme Court of the Virgin Islands

S. Ct. Civ. No. 2021-0011

JALANI WILLIAMS,
Appellant/Plaintiff,

v.

PEOPLE OF THE VIRGIN ISLANDS and WYNNIE TESTAMRK, DIRECTOR VIRGIN ISLANDS BUREAU OF CORRECTIONS,
Appellee/Defendant.

Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Re: Super. Ct. Civ. No. SX-55/2020

APPELLEE'S BRIEF

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ATTORNEY GENERAL

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SOLICITOR GENERAL

By: */s/ Kenneth Case*
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Dated: November 5, 2021

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STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction over this matter pursuant to V.I. CODE ANN. tit. 4 § 32(a) and Appellant's *Notice of Appeal*. (J.A. 1-2).

The standard of review for examining the Superior Court's application of law is plenary, while the Superior Court's findings of fact are reviewed for clear error. *Francis v. People*, 63 V.I. 724, 733, 746 (V.I. 2015).

Issues that are not raised at the trial level are reviewed for plain error. Under the plain error standard, "(1) there must be an error, (2) that is plain, (3) that affects the defendant's substantial rights, and (4) that affects the fairness, integrity, or public reputation of judicial proceedings." *Ledesma v. Gov't of the V.I.*, 72 V.I. 797, 805 (V.I. 2019) (*citing Frett v. People*, 66 V.I. 399, 408 (V.I. 2017); V.I.R.APP.P. 4(h)).

STATEMENT OF RELATED CASES OR PROCEEDINGS

Pursuant to V.I.R.APP.P. 22(a)(3)(i), the People are unaware of any related cases that are currently pending. However, Appellant has been before this Court on three prior occasions: *Williams v. People*, 53 V.I. 514 (V.I. 2010) ("*Williams (Jalani I)*"); *Williams v. People*, 59 V.I. 1024 (V.I. 2013) ("*Williams (Jalani II)*"); and *Williams v. People*, 64 V.I. 618 (V.I. 2016) ("*Williams (Jalani III)*") and has filed one previous Petition for Writ of

Habeas Corpus, case no. SX-2017-CV-00385. Appellant's co-defendant, Joh Williams, also had a related appellate case before this Court: *Williams v. People*, 59 V.I. 1043 (V.I. 2013) ("*Williams (Joh)*").

The first issue presented in this appeal, ineffective assistance of counsel, has not previously been before this Court. However, the "newly discovered" evidence that forms the basis of the second issue was already presented to this court in *Williams (Jalani II)* as part of Appellant's argument regarding the admission of prior inconsistent statements.

STATEMENT OF THE ISSUES

I. Whether the Petition Alleges Sufficient Facts to Support a Prima Facie Case of Ineffective Assistance of Counsel.

II. Whether the Affidavit of Lynell Hughes Constitutes Newly Discovered Evidence.

STATEMENT OF THE CASE AND FACTS

In the early morning hours of August 2, 2009, a shooting broke out in the parking lot of a restaurant and nearby gas station in St. Croix. During the melee, a man named Almonzo Williams was shot thirteen times and died while being transported from the scene. Two other men were also injured in

the gunfight, but were lucky enough to have survive their wounds. *Williams (Jalani II)*, 29 V.I. at 1028.

When officers arrived on scene, they spotted Appellant jumping into a vehicle through the passenger side window and speeding away. After engaged the officers in a high-speed chase and foot pursuit, Appellant was finally apprehended. A search of Appellant's person resulted in the discovery of two .380 caliber firearms and matching ammunition. *Id.* at 1028-9.

Later that night, two witnesses, Arkiesa Hughes and Lynell Hughes, voluntarily arrived at the police station where they spoke with Detective Richard Matthews and identified Appellant's co-defendant, Joh Williams, as the shooter. At later dates, the witnesses were interviewed for a second time by Detective Matthews. During these subsequent interviews, Lynell Hughes identified Appellant as an additional shooter and Arkiesa Hughes placed Appellant in the vicinity of the crime scene on the day of the shooting. *Id.* at 1029.

At trial, Lynell Hughes was called as a witness. While on the stand, she recanted her prior statements to Detective Matthews and testified that she had not seen anyone, including Appellant, firing shots that night. She also claimed that she tried to communicate this to the prosecutor prior to trial.

When the prosecution confronted her with her prior statements, she claimed that she could not read and denied making them altogether. *Id*.

At the conclusion of the trial, the jury convicted Appellant of numerous offenses, including first-degree murder. (J.A. 4). On May 7, 2012, the Superior Court entered its *Judgment and Commitment*, which sentenced Appellant to life without parole. (Appellant's Br. 6).[1] In *Williams (Jalani II)*, this Court affirmed all of Appellant's convictions, but because he was 16 years of age when the offenses were committed, the matter was remanded for resentencing in accordance with *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Upon remand, Appellant was sentenced to life with the possibility of parole, which was upheld by this Court upon subsequent appeal in *Williams (Jalani III)*. (J.A. 54).

On July 14, 2020, Appellant filed a *Petition for Extraordinary Writ of Habeas Corpus with Attached Affidavit* ("Petition") in the Superior Court of the Virgin Islands. (J.A. 13). Attached as an exhibit to the Petition was the affidavit of Lynell Hughes, dated August 15, 2017. (J.A. 22).

Pursuant to V.I. H.C.R. 2(b), when the court is presented with a writ of habeas corpus, "the Superior Court must first determine whether the petition states a prima facie case for relief – that is, whether it states facts that, if true,

[1] Appellant's original criminal case was SX-2009-CR-00554.

would entitle the petitioner to discharge or other relief." In accordance with this rule, the Superior Court conducted an initial consideration of the Petition. After completing its review, the Superior Court determined that the Petition did not state a prima facie case for relief and, on March 18, 2021, issued its *Order Denying Petition for Writ of Habeas Corpus* ("Order"). (J.A. 4). It is from this Order that Appellant now appeals to this Court. (J.A. 1).

SUMMARY OF THE ARGUMENT

Appellant's Petition alleges two reasons for which he believes he is entitled to habeas corpus relief: (1) ineffective assistance of counsel and (2) newly discovered evidence. The Superior Court correctly denied the Petition because Appellant failed to allege a prima facie case for either of these claims. While the Petition is rife with legal conclusions, it is nearly devoid of factual allegations. Even when viewed in the light most favorable to Appellant, the minimal facts alleged in the Petition fall far short of meeting his burden of proof.

In Appellant's Brief to this Court, he attempts to expand upon and explain the factual basis for his claims, however Appellant's Brief was not before the Superior Court. Only the facts presented to the Superior Court in the Petition are at issue, and those facts do not support the granting of a writ

of habeas corpus. Therefore, this Court must affirm the Superior Court's Order.

ARGUMENT

I. The Petition Does Not Allege Sufficient Facts to Support a Prima Facie Case of Ineffective Assistance of Counsel.

The first claim alleged in Appellant's Petition is ineffective assistance of counsel. To prevail on this claim, Appellant must show that (1) counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Corraspe v. People*, 53 V.I. 470, 279-80 (V.I. 2010) (*quoting Hill v. Lockhart*, 474 U.S. 52 (1985) and *Strickland v. Washington*, 466 U.S. 668 (1984)).

"A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690. "Tactical decisions about which competent counsel might disagree do not qualify as objectively unreasonable." *Suarez v. Gov't of the V.I.*, 56 V.I. 754, 760 (V.I. 2012) (*quoting Ibrahim v. Gov't of the V.I.*, 2008 V.I. Supreme LEXIS 20, at *2 (V.I. Jan. 18, 2008) (additional citations omitted); *see also*

Gov't of the V.I. v. Bradshaw, 726 F.2d 115, 120 (3d Cir. 1984) *(quoting Moore v. U.S.*, 432 F.2d 730, 736-37 (3d Cir. 1970)) ("[I]t would be difficult to find a case where even the ablest and most experienced trial lawyer would be completely satisfied after a searching re-examination of his conduct of a case.").

A. Failure to Object

The Petition alleges that Appellant's "former trial counsel waived [Appellant's] right to an objection that would have granted an entitlement for a new trial." (J.A. 16). However, the Petition fails factually support this legal conclusion with any acts or omissions of trial counsel as required by *Strickland*. At no point does the Petition identify the part of the trial or the specific objection that Appellant believes should have been made.

In the Brief, Appellant attempts to argue that his counsel was ineffective because he failed to object to the admission of prior inconsistent statements made by two witnesses, Arkiesa Hughes and Lynell Hughes. (Appellant's Br. 13). Even though the Brief identifies the witnesses and objection in question, nowhere in the Petition are these facts alleged. Based solely upon the Petition, which is all the Superior Court had before it, Appellant failed to sufficiently allege the facts necessary to support a prima facie case of ineffective assistance of counsel.

Even with the benefit of the additional facts provided by the Brief, Appellant has still failed to address why trial counsel's representation fell below an objective standard of reasonableness solely because of this one potential objection. Simply alleging that Appellant disagrees with his counsel's legal strategy and tactical decisions is not sufficient to sustain Appellant's burden. Appellant must proffer facts that demonstrate how trial counsel failed to exercise reasonable professional judgment, which both the Petition and Brief fail to do. *See Gillette v. Warden, Golden Grove Adult Correctional Facility*, 2021 V.I. Supreme LEXIS 16 (V.I. September 7, 2021) (holding that a petition which is highly ambiguous with respect to an ineffective assistance of counsel claim, does not provide the Superior Court with the ability to meaningfully determine whether the unprofessional performance affected the result of the proceeding).

As for the second prong, even if it was determined that Appellant's counsel's "conduct fell outside the zone of reasonable professional assistance, [Appellant] must also affirmatively prove that his counsel's conduct prejudiced him in the proceeding so that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Suarez*, 56 V.I. at 760 (internal quotation omitted).

The Brief argues that Appellant was prejudiced because his co-defendant, Joh Williams, successfully appeal his conviction on similar grounds. (Appellant's Br. 14). In support of this argument, Appellant quotes an excerpt from *Williams (Jalani II)*, which says, "Jalani – unlike his co-defendant, Joh – invited the error, and therefore waived, rather than forfeited appellate review of that evidentiary decision." *Id.*, 59 V.I. at 1032; (Appellant's Br. 13). Based upon this one sentence, Appellant simply concludes that his appeal would have succeeded, but for the waiver.

However, Appellant's conclusion conveniently ignores the rest of this Court's reasoning for its holdings in both *Williams (Joh)* and *Williams (Jalani II)*. As this Court explicitly states in *Williams (Joh)*, Joh Williams, was entitled to a new trial because:

> The People presented no other witnesses claiming to have seen Joh fire shots or to have seen him with a weapon. Joh did not flee from the police, nor were any guns recovered from his person. Therefore, given that the People did not introduce evidence other than the inadmissible prior inconsistent statements to tie Joh to any of the offenses, there is a reasonable possibility that the improperly admitted statements contributed to the conviction.

Id. at 1049.

The factual basis for the holding in *Williams (Joh)* was completely opposite of what this Court found in *Williams (Jalani II)*, which was that:

> Shortly after the shooting, a police officer, Orlando Benitez, observed an individual — later identified as Khareem — slowly

> driving a vehicle away from the restaurant, and saw another man — who he later identified as Jalani — jump into the vehicle through the passenger window, at which point the vehicle sped away. Benitez pursued the vehicle, and a high-speed chase ensued, resulting in Khareem's car speeding through a police roadblock and colliding with a truck. Although Khareem and Jalani fled on foot, another officer, Jose Ramos, apprehended Khareem, while Benitez apprehended Jalani.

Id. at 1028. Additionally, this Court also noted:

> [S]everal law enforcement witnesses testified to having found two firearms on Jalani's person, one of which had been fired and contained the same type of ammunition as that recovered at the scene, and testified that Jalani did not have a license to possess a firearm in the Virgin Islands, which is more than sufficient evidence to sustain the remaining convictions.

Id. at fn. 3.

As this Court has already previously acknowledged, even if the testimony of Arkiesa Hughes and Lynell Hughes was excluded, the People presented additional evidence sufficient for a reasonable jury to find Appellant guilty. Since this Court already determined that Appellant was not prejudiced by the inclusion of the witnesses' inconsistent statements at trial, a failure to object to those witnesses cannot sustain Appellant's burden to prove the result of the proceeding would have been different.

B. Waiver of Appellant's Additional Arguments

To the extent that Appellant's Petition contains additional grounds upon which a claim of ineffective counsel could be based, those arguments have been waived because they have not been briefed. For example, the

Petition's alleges that Appellant's trial counsel had a conflict of interest and that he waived Appellant's right to a full and complete transcript. (J.A. 17 – 8).

Even if these arguments were not waived by Appellant's failure to brief them, the Superior Court was still correct in finding that Appellant did not allege a prima facie case on these issues.

With regards to the conflict of interest, the Petition does not set forth any facts upon which a conflict of interest could be found.[2] The Petition simply alleges that "former trial counsel was forced with a choice between advancing his own interests above those of [Appellant's] when [Appellant] requested of his former trial counsel that he, (former trial counsel) should not allow the admission of prior inconsistent statements under no circumstances, but former trial counsel replied that 'he would do his own

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[2] The Virgin Islands Rules of Professional Conduct, Rule 211.1.7, defines a conflict of interest as follows:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> > (1) the representation of one client will be directly adverse to another client; or
> >
> > (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

thing'." (J.A. 16). As the Superior Court points out, this allegation is simply a disagreement over trial strategy and not a conflict of interest. (J.A. 6).

With regards to a waiver of Appellant's right to a full and complete transcript, the Petition provides no facts or explanation of this claim, beyond the one sentence alleging as much. As such, Appellant has not met his burden to allege facts sufficient to sustain a prima facie case.

II. The Affidavit of Lynell Hughes Does Not Constitute Newly Discovered Evidence.

According to 5 V.I.C. § 1314(2), a prisoner may be discharged "[w]hen the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge." "Discovering evidence that was not previously available is by definition 'some act, omission, or event,' and if that evidence is sufficiently conclusive as to a prisoner's innocence it may make the prisoner 'entitled to a discharge.' " *Fahie v. Gov't of the V.I.*, 73 V.I. 443, 449 (V.I. 2020).

This Court has identified five requirements that must be met in order for evidence to be considered "newly discovered:"

> (a) the evidence must be in fact newly discovered, *i.e.*, discovered since the trial; (b) facts must be alleged from which the court may infer diligence on the part of the movant; (c) the evidence relied on, must not be merely cumulative or impeaching; (d) it must be

> material to the issues involved; and (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

Phillips v. People, 51 V.I. 258, 280 (V.I. 2009) (quoting *United States v. Cimera*, 459 F.3d 452, 458 (3d Cir. 2006)).

"[W]hile a writ of habeas corpus may be granted based on newly discovered evidence, the standard that the evidence must meet is extremely high." *Id.* at 451. "For newly discovered evidence to "entitle" a petitioner to discharge, the evidence must be so conclusive and so persuasive that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Id.* at 451.

The Superior Court correctly concluded that the affidavit of Lynell Hughes did not meet the aforementioned requirements to be considered newly discovered evidence. The statements contained in the affidavit were available at trial, are cumulative, and would only serve to further impeach Lynell Hughes testimony.

In Appellant's prior appeal before this Court, *Williams (Jalani II)*, the admission of Lynell Hughes's prior inconsistent statements was at issue. *Id.* 29 V.I. at 1032. The affidavit of Lynell Hughes, which was attached to the Petition, contains no facts that were not available or already of record at the

time of the prior appeal. According to this Court's findings of fact in *Williams (Jalani II)*:

> Lynell testified that she did not see anyone, including Jalani, shooting that night and that she tried to communicate that fact to the People prior to trial. When confronted with her prior inconsistent statements to [Detective] Matthews . . . Lynell also claimed that she could not read and denied making the statements contained in the document.

Id. 29 V.I. at 1029.

The affidavit is no more than a recitation of Lynell Hughes's trial testimony, which says:

> The original statements I made to Detective Matthews were altered then placed in front of me to sign without the opportunity for me to review it . . . . Prior to trial I tried to communicate this fact to the then prosecutor . . . . I never saw Jalani Williams shoot Almonzo Williams while he was on the ground, furthermore, I never saw Jalani Williams shoot anyone or even fire a shot.

(J.A. 22).

Accordingly, the affidavit is both cumulative and serves only the purpose of impeaching Lynell Hughes's prior statements to Detective Matthews. Therefore, it does not meet the extremely high standard required to grant a writ of habeas corpus on the grounds of newly discovered evidence.

Even if the affidavit were considered as newly discovered evidence, and even if the allegations therein are taken as true, in the light most favorable to Appellant, the affidavit is still not "so conclusive and so persuasive that no

reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Fahie*, 73 V.I. at 451.

As previously discussed, Lynell Hughes's testimony was not the only evidence of Appellant's guilt that the People presented to the jury. That additional evidence included Arkiesa Hughes's testimony placing Appellant in the vicinity of the shooting; officers witnessing Appellant fleeing from the scene; his involvement in a high-speed chase and foot pursuit; and the two recently fired guns and ammunition matching the caliber used at the scene that were recovered from Appellant's person. *Williams (Jalani II)*, 59 V.I. at 1028-9 and fn. 3.

At most the affidavit only serves to recant Lynell Hughes testimony. It is not sufficient to overcome all of the additional, overwhelming evidence against Appellant. Therefore, the affidavit does not meet the conclusivity requirement of *Fahie* and the Superior Court was correct to deny Appellant's Petition.

CONCLUSION

For all of the foregoing reasons, the People respectfully request that this Honorable Court affirm the Superior Court's Order denying Appellant's Petition.

Respectfully Submitted,

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Solicitor General

Dated: November 5, 2021

By: /s/ *Kenneth Case*

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CERTIFICATE OF BAR MEMBERSHIP

I, Kenneth R. Case, Esq., Counsel for the Appellees, hereby certify that I am a member in good standing of the bar of the Supreme Court of the Virgin Islands.

/s/ *Kenneth Case*

CERTIFICATE OF LENGTH LIMITATION

I hereby certify that the People have complied with the 7,800-word limit, pursuant to V.I.R.App.P. 22(f). The word count for Appellee's Brief is 3,364 words.

/s/ *Kenneth Case*

CERTIFICATE OF SERVICE

I certify that on November 5, 2021, the undersigned caused a true correct copy of the foregoing to be e-filed via the V.I. Supreme Court Electronic Filing System, in accordance with V.I.R.App.P. 15(d), to Martial A. Webster, Sr., Esq., counsel for Appellant.

/s/ *Kenneth Case*