



John Hunter guilty of first degree murder, criminal conspiracy, and possession of the instruments of a crime for shooting and killing York on September 7, 1982. May 12, 1983 Tr. 8-9. Judge Gelfand sentenced both defendants to life imprisonment with consecutive ten-year terms of probation. Sept. 20, 1984 Tr. 27-28.

**A. The Trial Testimony**

During the trial, the Commonwealth established that York was in his car on September 7, 1982, when Teagle and Hunter approached the car with their guns drawn and shot and killed him. May 9, 1983 Tr. 56-58. The defendants admitted to killing York, but testified that York had in fact gone for his gun before they opened fire, thereby justifying their actions as self-defense. May 10, 1983 Tr. 71.

The Commonwealth's eyewitness was Konrad Jett. Jett and York were friends who had known each other for about twenty years. May 9, 1983 Tr. 65, 107. Jett testified that York was not carrying a gun that day, and he did not know of any incidents of York's violent behavior. Id. at 57, 92, 107-08. Jett testified that on September 7, 1982, York picked up him and Jett's two children and drove them to Jett's sister's friend's house, arriving some time after 6:30 p.m. May 9, 1983 Tr. 54, 56, 67. Jett stated that he had gone into the house, talked with his sister, came out, and returned to the car. Id. at 56, 66. Jett testified that he was at the passenger's side door when he

saw Teagle and Hunter approaching the driver's side of the car with guns drawn. Id. at 57-58, 71-72. Getting to the crucial point, Jett testified that Teagle and Hunter shot York through the driver's side window without provocation or warning, firing about four to six bullets each before running away.<sup>1</sup> Id. at 57-59, 71-72. Jett then ran around to the driver's side, pushed York's body into the passenger's seat, sat down with York's legs in his lap, and began to drive to a hospital. Id. at 61, 80-82. Jett got about four blocks before the police stopped him. Id. at 85-87; May 10, 1983 Tr. 32-34.

The Commonwealth also called a police officer who arrived at the crime scene shortly after the shooting. This officer testified that the police searched the area around where the shooting occurred but did not find the firearm Teagle and Hunter alleged York had in his possession. May 10, 1983 Tr. 13, 38-41.

Another police officer testified that he saw Jett get into the driver's side of York's car and drive away after the shooting. Id. at 32-34 This officer and his partner followed the car in their police vehicle and stopped Jett within several blocks. Id. The officer testified that the car remained in his sight the entire time, and at no time during the pursuit did he

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<sup>1</sup>There is disagreement in the record over this particular detail. Teagle testified that the car door was closed when he approached York. May 10, 1983 Tr. 79. On the other hand, Hunter testified that the door was open. Id. at 161. We accept Teagle's version of the facts here, but, in the end, it has no real bearing on our decision.

see Jett throw anything from the car. Id. at 38-39. After stopping the car, the officers transferred York to a police wagon, and he was taken to the hospital where he was pronounced dead. Id. at 40.

Both Teagle and Hunter testified at the trial. Teagle and Hunter both recalled running into York earlier on the day of the shooting. Id. at 60, 113. According to Teagle and Hunter, they were hanging out near the corner of 27th and Oakford Streets on the afternoon of September 7, 1982, when York drove up and got out of his car. Id. at 62-63. York asked Hunter whether he had the money he owed York.<sup>2</sup> Id. at 115. Dissatisfied with Hunter's response, York took out his gun and began beating Hunter with it. Id. at 64, 119-20. At that time, Teagle intervened and tried to stop York from beating Hunter. Id. at 64-65, 127. York turned on Teagle and noting that he, too, owed York money, York began to beat Teagle with the gun. Id. York demanded that they pay him by that night or he would kill them. Id. at 66-67, 120, 127. York then left. Id. at 128.

Both Teagle and Hunter testified that they tried to raise the money they owed York from various people, but to no avail. Id. at 67-69, 129. Later on the same day, Teagle and Hunter, again at 27th and Oakford, saw York a second time. Id. at 69. York drove up to the corner in his car, reiterated his

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<sup>2</sup> Teagle and Hunter testified that they owed York money for heroin that York had given them to sell. May 10, 1983 Tr. 65, 116.

demand for payment and his threat of death, and drove off. Id. Teagle and Hunter continued their unsuccessful quest for money.

At a little before 7:00 p.m., Teagle and Hunter testified that they returned to 27th and Oakford for a third time. Id. at 69-70, 130. York was already there, and he was getting into the driver's side of his car at the time. Id. at 70, 131-32. Teagle and Hunter also claimed that they saw Konrad Jett talking to someone and standing about twenty-five feet away from the car. Id. at 70. Teagle and Hunter testified that they decided to tell York that they had been unable to raise the necessary funds and needed more time. Id. at 71, 132. But as they approached, York, now seated in the car, noticed them, reached under his seat, retrieved his gun, and pointed it at Teagle and Hunter. Id. 71, 86-87, 132. Teagle and Hunter believed York meant to kill them, so they drew their guns<sup>3</sup> from their pockets and shot him before he could shoot them. Id. at 71, 74, 132-33. They then ran from the scene. Id. at 73, 134.

Teagle testified that he knew that York carried a gun on him always, and kept it under his seat when he was in his car. Id. at 72-73. Teagle also stated that York had a reputation for being short-tempered and quick to violence. Id. at 75-76.

#### **B. The Three Affidavits**

On March 23, 2004, Jett approached Teagle's sister

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<sup>3</sup>Teagle testified that as he approached the car, he had his gun in his pocket, and it had a round in the chamber and the hammer was cocked. May 10, 1983 Tr. 97-98.

during a funeral and stated that he wanted to clear his conscience about the testimony he gave in 1983. Mem. in Supp. of Pet. for Writ of Habeas Corpus, Ex. E, Attach. 3, Decl. of Catherine Teagle. In an affidavit attached to Teagle's petition, Jett asserted that York did in fact have a gun on the day Teagle and Hunter shot him. Id. Ex. B, Investigation Interview of Konrad Jett at 3. Jett stated that York was quick to violence, having once shot a man in the leg because he urinated too close to York's car. Id. at 10. Jett stated that he told prosecutors about this incident, but prosecutors told him that it was irrelevant. Id. This information was never turned over to the defense. Jett also stated that on the day of the shooting, York confided in Jett that he had pistol-whipped Teagle and Hunter because they had failed to pay him money owed for a package of heroin, and he was going to kill them if they did not pay. Id. at 3-4.

Jett's recollection of the shooting was also different. Jett now claims that "When I came out of [my sister's friend's house] I saw Teagle and Hunter approach the car from different directions. Then they started shooting. I yelled for Marvin to pull off." Id. at 6. After Teagle and Hunter ran away, Jett went around to the driver's side and found York slumped over with a gun in his lap. Id. at 7. Jett "passed [the gun] off to one of the guys on the corner," got in the car, and tried to drive to the hospital. Id. Jett explained that he lied during the trial because "I didn't want to make my boy look bad after I found out

he died...and I was angry and wanted to see [Teagle and Hunter] burn. They killed my friend and almost killed my children." Id. at 8.

The petition also includes the affidavits of Anthony "Moon" Eure and Mikal Muhammad a/k/a Ricky Brown. Id. Ex. A, Investigation Interview of Anthony Eure [hereinafter Eure Aff.]; Ex. C Investigation Interview of Mikal Muhammad [hereinafter Muhammad Aff.]. According to their affidavits, on September 7, 1982 both men were standing on the corner of 27th and Oakford Streets with Teagle and Hunter some hours before the shooting. Eure Aff. at 2-3; Muhammad Aff. at 2-3. York walked up to them, produced a firearm, and confronted Teagle and Hunter about the money they owed him. Eure Aff. at 3; Muhammad Aff. at 3-4. When they were not forthcoming, York beat both of them with the butt of his gun and threatened to kill them if they did not have the money the next time York ran into them. Eure Aff. at 3-4; Muhammad Aff. at 3-4. Both men also stated that York had a reputation for being a violent man. Eure Aff. at 5; Muhammad Aff. at 4.

Eure also stated that he talked with Teagle's attorney about York beating Teagle and Hunter, but Eure stated that the lawyer never took his statement or called him to testify. Eure Aff. at 6.

## **II. Procedural Background**

Judge Gelfand sentenced Teagle and Hunter on September

20, 1984. The Pennsylvania Superior Court affirmed the judgment on November 8, 1985. Commonwealth v. Teagle, 505 A.2d 1037 (Pa. Super. 1985). Teagle did not file an allocatur petition with the Pennsylvania Supreme Court.

On August 15, 1986, Teagle filed a pro se petition under Pennsylvania's Post Conviction Hearing Act ("PCHA"), 42 Pa. Con. Stat. Ann. § 9541, et seq. (renamed and superseded by the Pennsylvania Post-Conviction Relief Act ("PHRA")). Teagle was given court-appointed counsel and filed an amended petition. On August 16, 1988, the PCHA Court dismissed the petition after an evidentiary hearing.

On February 12, 1997, Teagle filed a second pro se PHRA petition. On June 25, 1997, the PCRA Court dismissed the petition as untimely. The Pennsylvania Superior Court affirmed on August 3, 1998. Commonwealth v. Teagle, 726 A.3d 416 (Pa. Super. 1998). The Pennsylvania Supreme Court denied allocatur on April 6, 1999. Commonwealth v. Teagle, 737 A.2d 1225 (Pa. 1999).

On June 28, 2004, Teagle filed a third, counseled PCRA petition. The PCRA Court dismissed the petition on August 25, 2005 as untimely and without merit. The Pennsylvania Superior Court affirmed. Commonwealth v. Teagle, 911 A.2d 187 (Pa. Super 2006). The Pennsylvania Supreme Court denied allocatur on March 7, 2007. Commonwealth v. Teagle, 920 A.3d 833 (Pa. 2007).

On July 5, 2007, Teagle filed the present petition for habeas corpus pursuant to 28 U.S.C. § 2254.

### **III. Analysis**

Teagle's petition presents several grounds. First, Teagle contends the state courts' decisions to dismiss his most recent PCRA claim without an evidentiary hearing was contrary to, and involved an unreasonable application of, clearly established federal law because Teagle presented newly discovered evidence of actual innocence. Second, Teagle contends that the state courts "relied on inaccurate information and false assumptions", Pet. at 5, when they determined that Jett's recantation was not credible and was not newly discovered evidence that would fall under Pennsylvania's exception to its post-conviction relief statute of limitations under 42 Pa. Con. Stat. Ann. § 9545(b)(1)(ii).<sup>4</sup>

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<sup>4</sup>The relevant parts of 42 Pa. Con. Stat. Ann. § 9545(b) read:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could

Third, Teagle asserts that the PCRA Judge violated Teagle's due process and equal protection rights by determining that Jett's new statements would not have affected the truth-determining process. Fourth, Teagle contends that the newly discovered evidence establishes that the Commonwealth violated Brady v. Maryland, 373 U.S. 83 (1963).

The Commonwealth responds that Teagle's petition is time-barred and that equitable tolling does not apply. Teagle argues that the affidavits of Muhammad, Eure, and Jett constitute newly discovered, credible evidence of actual innocence warranting equitable tolling so that his petition may be considered on the merits.

**A. Statute of Limitations**

A petitioner for habeas corpus in federal court must file his or her petition within one year of the latest of the following four dates:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by

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have been presented.

the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

Furthermore, any "time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." Id. § 2241(d)(2). However, any state post-conviction petition that is "rejected by a state court as untimely is not 'properly filed' within the meaning of the section, and accordingly does not toll the one-year statute of limitations." Perry v. DiGuigliemlo, 169 Fed. Appx. 134, 137 (3d Cir. 2006)<sup>5</sup> (citing Pace v. DiGuigliemlo, 544 U.S. 408, 413-14 (2005)). We are obliged to "give deference to the state court's determination of the timeliness of the state PCRA petition" because once Pennsylvania courts have determined that a petition is untimely "it would be an undue interference for [us] to decide otherwise." Id. (citing Merritt v. Blaine, 326 F.3d 157, 168 (3d Cir. 2003) and Fahy v. Horn, 240 F.3d 239, 243-44 (3d Cir. 2001)).

Here, the Pennsylvania courts held that Teagle's

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<sup>5</sup>This opinion is unpublished and has no precedential value, but we find it instructive here.

petition was untimely because they determined March 23, 2004 -- the date Jett approached Teagle's sister -- to be the date when the state statute of limitations started to run, and, furthermore, the evidence Teagle proffered did not qualify as "newly-discovered" evidence under Pennsylvania law. Mem. in Supp. of Pet. for Writ of Habeas Corpus, Attach. 1, PCRA Court Op. in Commonwealth v. Teagle, No. 2739 EDA 2005 (Ct. Comm. Pl. Dec. 22, 2005); Ex. E, Attach. 4, Superior Court Op. in Commonwealth v. Teagle, No. 2739 EDA 2005 (Pa. Super. Sept. 25, 2006). Based on these determinations, the state courts found that Teagle's most recent PCRA petition was untimely. We cannot and will not disturb such determinations as they are based exclusively on interpretations of state law.

Thus, we cannot toll AEDPA's statute of limitations for the time during which Teagle's most recent PCRA claim was pending. Even giving Teagle the benefit of the latest possible date -- i.e., that of the Muhammad Affidavit, June 21, 2004 -- Teagle is still well past the one-year deadline for filing his federal habeas petition.

**B. Equitable Tolling**

Teagle's primary argument is that we should equitably toll the statute of limitations because he has presented newly discovered evidence of his actual innocence in fact. Teagle argues the Supreme Court has held that a district court may hear an otherwise barred federal habeas claims if the claim "falls

within the narrow class of cases...implicating a fundamental miscarriage of justice." Schulp v. Delo, 513 U.S. 298, 314-15 (1995) (also holding that an actual innocence claim is "not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits" (internal quotations omitted)). But the Supreme Court has not specifically held that AEDPA is subject to equitable tolling. Pace, 544 U.S. at 418 n.8.

Many Courts of Appeal have held that the one-year statute of limitations for federal habeas claims is subject to equitable tolling for actual innocence claims. Horning v. Lavan, 197 Fed. Appx. 90, 93 (3d Cir. 2006)<sup>6</sup> (citing Souter v. Jones, 395 F.3d 577, 602 (6th Cir.2005) (holding that "where an otherwise time-barred habeas petitioner can demonstrate that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt, the petitioner should be allowed to pass through the gateway and argue the merits of his underlying constitutional claims"); Flanders v. Graves, 299 F.3d 974, 978 (8th Cir.2002) (requiring that equitable tolling based on actual innocence be accompanied by "some action or inaction on the part of the respondent that prevented [the petitioner] from discovering the relevant facts in a timely fashion, or, at the very least, that a reasonably diligent petitioner could not have

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<sup>6</sup>Again, though this opinion is non-precedential, we find it instructive and directly on point.

discovered these facts in time to file a petition within the period of limitations"); Gildon v. Bowen, 384 F.3d 883, 887 (7th Cir.2004), cert. denied, 543 U.S. 1168, 125 S.Ct. 1348, 161 L.Ed.2d 144 (2005) (adopting the Eighth Circuit's approach in Flanders); Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir.2000) (holding that equitable tolling is appropriate "when a prisoner is actually innocent" and "diligently pursue[s] his federal habeas claims"); Felder v. Johnson, 204 F.3d 168, 171 & n. 8 (5th Cir.2000) (observing that a claim of actual innocence "does not constitute a 'rare and exceptional circumstance,'" but suggesting that a "showing of actual innocence" might)).

Our Court of Appeals has also held that AEDPA is subject to equitable tolling. Miller v. New Jersey State Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998) ("equitable tolling is proper only when the principles of equity would make [the] rigid application [of a limitation period] unfair...Generally, this will occur when the petitioner has in some extraordinary way... been prevented from asserting his or her rights" (internal quotations omitted)). But our Court of Appeals has not yet decided whether an actual innocence claim tolls AEDPA's statute of limitations, or what kinds of evidence the petition must contain, or what standard we are to apply in these cases. Horning, 197 Fed. Appx. at 93 (citing United States v. Davies, 394 F.3d 182, 191 n.8 (3d Cir. 2005)). Whatever else a habeas petitioner must do, the only thing that is certain is that he or she "must show that he or she exercised reasonable diligence in

investigating and bringing [the] claims." Id. (quoting Miller, 145 F.3d at 618-19).

In the absence of a clear standard, Teagle urges us to adopt the Sixth Circuit's standard in Souter, which provides that AEDPA's one-year bar will not prevent the district court from hearing an otherwise time-barred habeas claim if "petitioner can demonstrate that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt." Souter, 395 F.3d at 602. This requires that Teagle demonstrate that reasonable jurors would find by a preponderance of the evidence that Teagle acted in self defense when he killed Marvin York. Or, stated another way, if any reasonable juror would find that Teagle did not kill Marvin York in self defense, then we cannot equitably toll AEDPA's statute of limitations.

Unfortunately for Teagle, the facts do not support such a showing. A reasonable juror could find Teagle did murder Marvin York even assuming the proffered facts. In their affidavits, both Muhammad and Eure stated that York beat and threatened Teagle and Hunter earlier in the day. Although these statements do corroborate Teagle's and Hunter's testimony, they also establish motive for Teagle and Hunter to murder York.

Jett also stated in his affidavit that York was a violent man and carried a gun the day of the shooting. These facts also corroborate Teagle's and Hunter's accounts of the shooting, but they do not eliminate the possibility that Teagle and Hunter planned to kill York because of the beatings they

received and the threats York made. Teagle and Hunter both contend that York went for his gun first, and they responded by shooting him. But the trial court did not find Teagle's and Hunter's accounts credible. Though Jett's new account of what happened corroborates that York had a gun, Jett was not in a position to see whether Teagle, Hunter, or York was first to brandish a firearm. It would not be unreasonable on this hypothetical record for a juror to find that Teagle and Hunter were first to act. Since this distinct and strong possibility exists, we cannot hold that Teagle has met the exacting Souter standard. Therefore, Teagle's habeas claims do not warrant equitable tolling, and we must deny his petition.

However, we also find that reasonable jurists could disagree with our determination that Teagle's newly discovered facts do not satisfy the requisite standard of equitable tolling of AEDPA's statute of limitations based on an actual innocence claim containing newly discovered evidence. Therefore, we will issue a certificate of appealability on this point.

BY THE COURT:

/s/ Stewart Dalzell, J.



