

ADNAN SYED,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NOs. 199103042-046

PETITION NO. 10432

STATEMENT OF REASONS AND ORDER OF THE COURT

This case comes before the Court as a remand from the Court of Special Appeals and the resulting Motion to Reopen Post-Conviction Proceedings. On May 18, 2015, the Court of Special Appeals stayed and remanded the instant matter to the Circuit Court for Baltimore City to provide Adnan Syed (hereinafter “Petitioner”) with the opportunity to 1) file, pursuant to Md. Code Ann. (2001, 2008 Repl.) § 7-104 of the Criminal Procedure Article (hereinafter “Crim. Pro.”), a Request to Reopen the Post-Conviction Proceedings in light of a January 13, 2015 affidavit of Asia McClain (hereinafter “McClain”), which seeks to address the issue of trial counsel’s alleged failure to contact McClain as an alibi witness; and 2) supplement the record of the previously concluded post-conviction proceedings with the January 13, 2015 affidavit and other relevant evidence so that the Court of Special Appeals may consider the merits of Petitioner’s appeal.

Following the Court of Special Appeals Remand Order, Petitioner filed a Motion to Reopen Post-Conviction Proceedings on June 30, 2015. Then on August 24, 2015, Petitioner filed a Supplement to his Motion to Reopen Post-Conviction Proceedings. Petitioner’s Supplement raises an additional claim of ineffective assistance of trial counsel for an alleged

failure to properly cross-examine the State of Maryland's (hereinafter "Respondent") expert on cell tower location reliability. Respondent filed a Consolidated Response in Opposition to Petitioner's Motion and Supplement to Reopen Post-Conviction Proceedings on September 23, 2015. On October 13, 2015, Petitioner filed a Reply to Respondent's Consolidated Response. Both parties have been afforded ample opportunity by way of pleadings to set forth their respective positions for Petitioner's Motion.

This Court may reopen Petitioner's previously concluded post-conviction proceedings if the Court determines that reopening the matter is in the interests of justice. Crim. Pro. § 7-104. The interests of justice standard provides "a wide array of possibilities" for reopening a post-conviction proceeding. *Gray v. State*, 388 Md. 366, 382 n.7 (2005). The grounds for reopening a previously concluded post-conviction proceeding include but are not limited to a verdict that "was contrary to the evidence; newly discovered evidence; accident and surprise; . . . fraud or misconduct of the prosecution." *Love v. State*, 95 Md. App. 420, 427 (1993). In fact, the list of possible grounds for reopening a post-conviction proceeding is "virtually open-ended." *Id.*; see also *Gray v. State*, 158 Md. App. 635, 646 n.3 (2004) (adopting *Love*'s interpretation of the interests of justice standard for reopening post-conviction proceedings under Crim. Pro. § 7-104).

In the present case, Petitioner moves this Court to reopen the post-conviction proceedings for the purpose of supplementing the record with McClain's January 13, 2015 affidavit, her potential testimony, and other evidence relating to 1) trial counsel's alleged failure to contact McClain as an alibi witness and 2) potential prosecutorial misconduct during the post-conviction proceedings. The Court of Special Appeals indicated in the Remand Order that "a stay of this

appeal and a limited remand to the circuit court is in the interest of justice.” See May 18, 2015 Remand Order, at 3. As such, this Court will act accordingly and reopen the post-conviction proceedings with respect to the issues relating to McClain’s January 13, 2015 affidavit.

In addition, after reviewing Petitioner’s filings and Respondent’s consolidated response, this Court concludes that, in its own discretion, reopening the post-conviction proceedings would be in the interests of justice for all parties. This will allow the Petitioner to introduce the January 13, 2015 affidavit from McClain, the potential testimony of McClain, and relevant evidence concerning Petitioner’s claims of ineffective counsel and alleged prosecutorial misconduct during the post-conviction proceedings; both of which are grounds that warrant reopening post-conviction proceedings under the possibilities stated under *Gray*. 388 Md. at 382 n.7. Reopening the post-conviction proceedings will also give Respondent an equal opportunity to introduce testimony and other evidence to refute Petitioner’s claims. Allowing the parties to supplement the record with relevant testimony and evidence will also provide the Court of Special Appeals with a full and complete record, which would allow the appellate court to consider the merits of Petitioner’s entire appeal.

Petitioner also moves this Court to reopen the post-conviction proceedings to allow him to raise the issue of cell tower location reliability, which is not currently before the Court of Special Appeals and was not raised at the previously concluded post-conviction proceedings. Although this Court is aware that the Court of Special Appeals issued a limited remand, the Remand Order provided this Court with the discretion to conduct any further proceedings it deems appropriate. See May 18, 2015 Remand Order, at 4. After careful consideration of the parties’ pleadings, this Court in the exercise of its discretion, concludes that reopening the post-

conviction proceedings to allow Petitioner to raise the issue of cell tower location reliability and supplement the record with relevant materials would be in the interests of justice. The issue of cell tower location reliability is premised upon Petitioner's claims of ineffective assistance of counsel and potential prosecutorial misconduct during trial, which are grounds for reopening the post-conviction proceedings under Maryland law. *Gray*, 388 Md. at 382 n.7. Respondent can, of course, submit relevant materials to rebut Petitioner's claims.

As noted *supra*, the Court of Special Appeals also provided this Court with the discretion to conduct any further proceedings it deems appropriate. *See* May 18 Remand Order, at 4. This Court finds no need to revisit other issues raised in the previously concluded post-conviction proceedings that are still pending before the Court of Special Appeals. This Court's decision to reopen the previously concluded post-conviction proceedings is limited only to the issues raised by McClain's January 13, 2015 affidavit and Petitioner's Supplement concerning the matter of cell tower location reliability.

Therefore, upon consideration of the foregoing Motion to Reopen Post-Conviction Proceedings and Supplement thereto as well as the State's Consolidated Response, in the above-captioned case, it is this 6th day of November, 2015;

ORDERED, that Petitioner's Motion to Reopen Post-Conviction Proceedings and Supplement thereto is hereby **GRANTED**; and it is further

ORDERED, that this Court shall limit its consideration to:

- 1) McClain's January 13, 2015 affidavit, McClain's potential live testimony, and other relevant materials concerning a) trial counsel's failure to contact McClain as a

potential alibi witness and b) alleged prosecutorial misconduct during the post-conviction proceedings; and

- 2) Relevant evidence relating to a) trial counsel's alleged failure to cross examine Respondent's expert on the reliability of the cell tower location evidence and b) potential prosecutorial misconduct during trial; and it is further

ORDERED, that the parties shall contact this Court within 10 (ten) days of the filing of this Order for the purposes of scheduling a hearing.

Judge Martin P. Welch, Part 97
Signature Appears on Original Document

MARTIN P. WELCH,
JUDGE

cc: Court File
The Honorable W. Michel Pierson
C. Justin Brown, Esq., The Law Offices of C. Justin Brown
Thiru Vignarajah, Esq., The Office of the Maryland Attorney General

TRUE COPY
TEST



LAVINIA G. ALEXANDER, CLERK

