

**For Publication**

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS**

**JAMAL JUSTIN FAHIE,**

Appellant/Petitioner,

v.

**GOVERNMENT OF THE VIRGIN ISLANDS,**

**DENISE N. GEORGE, ESQ., ATTORNEY**

**GENERAL OF THE U.S. VIRGIN ISLANDS and**

**MILDRED TROTTER, WARDEN, GOLDEN**

**GROVE ADULT CORRECTIONAL FACILITY,**

Appellees/Respondents.

) **S. Ct. Civ. No. 2019-0026**

) Re: Super. Ct. Civ. No. 002/2016 (STT)

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On Appeal from the Superior Court of the Virgin Islands

Division of St. Thomas-St. John

Superior Court Judge: Hon. Denise M. Francois

Argued: November 12, 2019

Filed: June 8, 2020

Cite as: 2020 VI 6

**BEFORE:** **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and  
**IVE ARLINGTON SWAN**, Associate Justice.

**APPEARANCES:**

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## **OPINION OF THE COURT**

### **HODGE, Chief Justice.**

¶ 1 Jamal Justin Fahie appeals from the Superior Court's February 11, 2019 denial of his Petition for Writ of Habeas Corpus. For the reasons that follow, we affirm.

### **I. BACKGROUND**

¶ 2 On November 18, 2011, Omar Baltimore was shot and killed at Bunker Hill in St. Thomas. The police arrested Fahie and Kamaal Francis for the crime, charging them with first degree murder as well as a number of other offenses. During the investigation, the police interviewed Sean Freeman, Francis' roommate at the time, who denied any knowledge of the crime. In Francis' initial statement to the police, which was played for the jury but which Francis later disavowed, Francis stated that he had been told by a police officer that Baltimore was a suspect in the gunpoint robbery of Francis' mother. However, through a plea agreement with the People, Francis agreed to testify against Fahie in exchange for pleading guilty to accessory after the fact and misprision of a felony.

¶ 3 During Fahie's trial, Francis testified that he witnessed Fahie shoot Baltimore repeatedly while Francis stood hidden in a nearby stairwell. He testified that both he and Fahie had been wearing white shirts and black pants or shorts, but that Fahie had also been wearing a black ski mask as well as a Yankees hat, which he threw on a table before the shooting and stopped to pick up afterwards, and which was later collected as evidence. He further stated that Fahie had used a black Glock 9mm pistol, and that he himself had not had a gun. Francis also conceded that he had repeatedly made false statements to the police.

¶ 4 The defense called Carol Kelly, the witness who made the 911 call. She testified that she witnessed the shooting and shortly thereafter identified Francis as the sole shooter from a photo array at the police station.

Throughout her testimony, Kelly maintained that she only saw one person at the scene and one firearm in the hands of that person – that person was Kamaal Francis. However, Kelly did indicate that she heard several gunshots – around 10 – that sounded as if two guns were firing, that she did not believe Francis could have fired the first set of shots, and that she saw an arm extended and pointing across the road while Francis continued walking toward the body on the ground.

*Fahie v. Gov't of the V.I.*, Case No. ST-16-MC-002, at 2 (V.I. Super. Ct. Feb. 11, 2019).

¶ 5 The jury found Fahie guilty on all counts, and the trial court denied his motion for a judgment of acquittal, new trial and arrest of judgment. On May 8, 2013, he was sentenced to life imprisonment without parole.

¶ 6 Fahie promptly appealed, and on May 18, 2015, this Court affirmed his conviction. *Fahie v. People*, 62 V.I. 625 (V.I. 2015). Fahie petitioned the United States Court of Appeals for the Third Circuit for a writ of certiorari, which the Third Circuit granted to examine two issues: “(1) whether the V.I. Supreme Court erred in ruling that it was appropriate for the trial court to give an “aiding and abetting” instruction under the circumstances of this case; and (2) whether the V.I. Supreme Court used the correct standard to assess whether another supposed error in the jury instructions was harmless.”<sup>1</sup> *Fahie v. People*, 858 F.3d 162, 164 (3d. Cir. 2017).

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<sup>1</sup> “The Third Circuit had temporary certiorari jurisdiction over the decisions of this Court in all ‘cases commenced’ before December 28, 2012,” the effective date of Public Law 112-226. *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 373 n.3 (V.I. 2016) (citing *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 689 n.10 (V.I. 2015)). Although this Court issued its *Fahie* decision after December 28, 2012, the date the Third Circuit granted certiorari, the Third Circuit had interpreted “cases commenced” as referring to the date an action was initiated in the Superior Court. *See Seafarers*

¶ 7 During the pendency of the Third Circuit proceeding, on January 11, 2016, Fahie filed a petition for writ of habeas corpus with the Superior Court, based on purportedly newly discovered evidence: specifically, a sworn statement from Sean Freeman. In the statement, Freeman recanted his prior statement to the VIPD, asserting instead that on the day of the shooting he saw Francis with a gun matching the one used in the shooting and that Francis “told Freeman he was going to ‘get’ that ‘punk’ ‘Omari’ for robbing his mother.” (J.A. 6; 57).

¶ 8 On March 11, 2016, the trial court stayed Fahie’s petition in light of the pending proceedings in the Third Circuit. However, on May 24, 2017, the Third Circuit affirmed this Court’s decision, at which point Fahie sought a ruling on his Superior Court petition. On February 7, 2019, the Superior Court denied Fahie’s petition, determining that Virgin Islands law does not permit habeas claims for actual innocence based on newly discovered evidence, and even if it did, Fahie’s evidence would not rise to the necessary level of persuasiveness. On March 8, 2019, Fahie timely filed his notice of appeal. *See* V.I. R. APP. P. 5(a)(1).

## **II. DISCUSSION**

### **A. Jurisdiction and Standard of Review**

¶ 9 This Court has appellate jurisdiction over “all appeals arising from final judgments, final decrees or final orders of the Superior Court.” 4 V.I.C. § 32 (a); *see also* 48 U.S.C. § 1613a(d). Because the Superior Court’s February 11, 2019 order denying Fahie’s petition for a writ of habeas corpus is a final order, this Court has jurisdiction over the appeal. *See Rodriguez v. Bureau of*

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*Int’l Union (Bason) v. Gov’t of the V.I.*, 767 F.3d 193, 205-06 (3d Cir. 2014). Subsequently, the Third Circuit overturned *Bason*, recognizing that “cases commenced” refers to the date a certiorari petition is filed. *See Vooy v. Bentley*, 901 F.3d 172, 175 (3d Cir. 2018) (en banc).

*Corr.*, 58 V.I. 367, 370-71 (V.I. 2013) (“An order denying a petition for a writ of habeas corpus is a final order . . . from which an appeal may lie.”).

¶ 10 This Court exercises plenary review over the Superior Court’s application of law. *Connor v. People*, 59 V.I. 286, 290 (V.I. 2013).

### **B. Actual Innocence in Habeas Corpus in the Virgin Islands**

¶ 11 Fahie argues that he is entitled to a writ of habeas corpus for actual innocence based on newly discovered evidence, asserting that this is a permissible basis for a habeas corpus writ under 5 V.I.C. § 1314.<sup>2</sup>

¶ 12 Virgin Islands law provides that “[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatsoever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.” 5 V.I.C. § 1301. It further provides:

If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restriction of section 1313 of this title:

(1) When the jurisdiction of such court or officer has been exceeded.

(2) When 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.

(3) When the process is defective in some matter of substance required by law rendering such process void.

(4) When the process, though proper in form, has been issued in a case not allowed by law.

(5) When the person having custody of the prisoner is not the

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<sup>2</sup> Fahie also argues that this is a permissible basis for habeas relief under the Revised Organic Act (“ROA”); however, as we find that 5 V.I.C. § 1314 allows habeas claims for actual innocence based on newly discovered evidence, we decline to determine whether such relief is also cognizable under the ROA. *See In re L.O.F.*, 62 V.I. 655, 669 n.10 (V.I. 2015) (“[T]his Court has held that the doctrine of constitutional avoidance cautions against gratuitously deciding constitutional issues.”) (quoting *Bryan v. Fawkes*, 61 V.I. 416, 465 n.27 (V.I. 2014)).

person allowed by law to detain him.

(6) Where the process is not authorized by any order, judgment or decree of any court, nor by any provision of law.

(7) Where a party has been committed on a criminal charge without reasonable or probable cause.

5 V.I.C. § 1314. Fahie argues that actual innocence based on newly discovered evidence is grounds for release based on section 1314(2).<sup>3</sup>

¶ 13 “When interpreting the meaning of a statute, we first look to its plain text.” *Haynes v. Ottley*, 61 V.I. 547, 561 (V.I. 2014). In this case, the statute specifically provides that a writ may be issued “[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.” 5 V.I.C. § 1314(2). 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.” This text is not ambiguous; the use of the word “some” shows it to be deliberately broad.

¶ 14 The Superior Court stated that it “[did] not find it appropriate to insert additional grounds for relief into the language of the statute,” *Fahie v. Gov’t of the V.I.*, Case No. ST-16-MC-002, at 4 (V.I. Super. Ct. Feb. 11, 2019), but allowing a writ of habeas corpus to be granted in the face of a particular “act, omission, or event” is simply adhering to the plain text of the statute. *See* 1 V.I.C. § 42 (“Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language.”). This Court implied as much in *George v. Wilson*, 59 V.I. 984, 993 (V.I. 2013), holding that the Superior Court’s use of a local rule to dismiss

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<sup>3</sup> We discussed habeas corpus claims of actual innocence in *Ledesma v. Government of the Virgin Islands*, 2019 VI 31 ¶¶19 – 24; however, we did not determine in *Ledesma* whether such claims are cognizable in the Virgin Islands.

a habeas petition was improper because “[t]here is no time limit within the habeas statute or case law that restricts a petitioner from raising a claim of new evidence” and utilization of a court rule to create a time limit constituted a violation of the petitioner’s statutory right to seek habeas relief. *Id.* (citations omitted). By refusing to apply the plainly broad language of the statute, the Superior Court impermissibly narrowed the statutory terms. *See Haynes*, 61 V.I. at 561 (“[C]ourts, as a general rule, should not adopt an interpretation of a statute that contradicts its plain text.”); *Estate of Skepple v. Bank of Nova Scotia*, 69 V.I. 700, 736 (V.I. 2018) (“When the plain language of a statute is an unambiguous statement of legislative intent, no further judicial inquiry is appropriate.”).

¶ 15 The Superior Court observed that the Legislature “could have [included actual innocence as a grounds for habeas relief] with clear statutory language similar to that of other jurisdictions,” citing the D.C. and Maryland codes. However, “[w]here a statute is silent on a particular topic, this does not automatically make a statute ambiguous, and such silence should be considered in light of the underlying legislative intent.” *Skepple*, 69 V.I. at 736. In this case, as we have no direct evidence of the Legislature’s intent, we should look at the text in the context of the broader statute. The intent of the statute, as with the writ of habeas corpus in general, is to prevent injustice. *See, e.g., Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 376 (V.I. 2013) (“[H]abeas corpus review is [undertaken] to prevent manifest injustice.”); *Summerville v. Warden, State Prison*, 641 A.2d 1356, 1369 (Conn. 1994) (“[H]abeas corpus is designed to remedy fundamental miscarriages of justice. The continued imprisonment of one who is actually innocent would constitute a miscarriage of justice.”) (citations omitted). In the Virgin Islands habeas corpus statute this is evident from 5 V.I.C. § 1311, providing procedures for a habeas corpus petition: the statute

requires that if a violation is found, the court act “as the justice of the case may require.” 5 V.I.C. § 1311; *see also Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 295-96 (V.I. 2014).<sup>4</sup> Imprisoning an innocent person is the ultimate injustice, and the Legislature cannot have intended the courts to be impotent in the face of this injustice.

### **C. Adequacy of Fahie’s Newly-Discovered Evidence**

¶ 16 However, while a writ of habeas corpus may be granted based on newly discovered evidence, the standard that the evidence must meet is extremely high, and the evidence Fahie offers simply does not meet that bar. “When presented with a petition for 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, would entitle the petitioner to discharge or other relief.” *See* V.I. Habeas Corpus Rules 1(b)(1)<sup>5</sup>; *Alexander v. People*, 65 V.I. 385, 391 (V.I. 2016) (quoting *In re Connor*, 61 V.I. 273, 311 (V.I. 2014)). Virgin Islands law similarly mandates that the “act” underlying the habeas petition, in this case discovering new evidence, make Fahie “entitled to release.” 5 V.I.C. § 1314(2) (emphasis added). Thus to determine whether Fahie has stated a *prima*

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<sup>4</sup> We may also use as persuasive authority the application of the statutes whose language is fundamentally identical to that of the Virgin Islands’, specifically those in Puerto Rico (which has no caselaw on this issue) and California. *Rivera-Moreno*, 61 V.I. at 296 (“[I]n the absence of any evidence that the Virgin Islands Legislature borrowed our habeas corpus statute from a particular jurisdiction, this Court considers as persuasive authority decisions of both the Supreme Court of Puerto Rico and the Supreme Court of California.”). As the Superior Court itself noted, California courts have repeatedly endorsed actual innocence as a grounds for habeas relief. *In re Lindley*, 177 P.2d 918, 927-28 (Cal. 1947); *In re Weber*, 523 P.2d 229, 243-44 (Cal. 1974)); *In re Lawley*, 179 P.3d 891, 898 (Cal. 2008). The Superior Court notes that the California courts have not specifically referenced the statute in this jurisprudence, but nor have they grounded the right in any other source, such as the state or federal constitution; instead, they appear to have derived the right from the nature of habeas corpus.

<sup>5</sup> The V.I. Habeas Corpus Rules became effective on December 1, 2017. The rules implement the Virgin Islands habeas corpus statute, 5 V.I.C. § 1301 *et seq.* V.I. H.C.R. 1(c).



facie case for relief, we examine whether, accepting all of Fahie's newly discovered evidence as true, Fahie would be "entitle[d] to discharge or other relief."

¶ 17 Fahie's new evidence is not sufficient to state a prima facie case. 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. *See, e.g., Weber*, 523 P.2d at 243 ("[N]ewly discovered evidence does not warrant [habeas] relief unless it is of such character 'as will completely undermine the entire structure of the case upon which the prosecution was based' [or] unless (1) the new evidence is conclusive, and (2) it points unerringly to innocence."); *Montoya v. Ulibarri*, 163 P.3d 476, 486 (N.M. 2007) ("[A] petitioner asserting a freestanding claim of innocence must convince the court by clear and convincing evidence that no reasonable juror would have convicted him in light of the new evidence"); *In re Allen*, 366 S.W.3d 696, 704-05 (Tex. 2012) (differentiating between freestanding claims of actual innocence, which require clear and convincing evidence, and claims of innocence as a gateway to reviewing other constitutional violations, which require only that it be more likely than not); *Miller v. Comm'r of Corr.*, 700 A.2d 1108, 1130-31 (Conn. 1997) ("First, taking into account both the evidence produced in the original criminal trial and the evidence produced in the habeas hearing, the petitioner must persuade the habeas court by clear and convincing evidence . . . that the petitioner is actually innocent of the crime of which he stands convicted. Second, the petitioner must establish that, after considering all of that evidence and the inferences drawn therefrom . . . no reasonable fact finder would find the petitioner guilty." ).<sup>6</sup>

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<sup>6</sup> While states vary somewhat in the standards used to find actual innocence, Fahie's evidence does not come close to meeting any of them; therefore, in this opinion we do not identify the specific standards to be used in the Virgin Islands.

¶ 18 Freeman's statement does not meet this standard. Even accepting all of his factual contentions as true, the evidence is not conclusive; at best it provides counter-evidence to the evidence on which Fahie was originally convicted, which the jury in a new trial would be required to weigh. Both Francis' credibility and the theory that Francis was the sole shooter were raised at trial and evidently rejected by the jury, and Freeman's statement merely provides additional support for both. Nor does the presumption of innocence apply here: "When a defendant seeks to challenge the determination of guilt after he has been validly convicted and sentenced, it is fair to place on him the burden of proving his innocence, not just raising doubt about his guilt." *Herrera*, 506 U.S. at 443. Fahie has not established that based on the new evidence provided he would "probably" be acquitted, much less that the evidence "entitle[s]" him to release. Thus he has not established a prima facie case for habeas corpus relief, and the Superior Court did not err in denying his petition.

### III. CONCLUSION

¶ 19 A right to habeas corpus for actual innocence based on newly discovered evidence exists under Virgin Islands law. However, to successfully establish a prima facie case for relief Fahie must demonstrate that the newly discovered evidence reaches an extremely high standard of persuasiveness, and the evidence Fahie offers does not meet that standard. As a result, we affirm.

**Dated this 8<sup>th</sup> day of June, 2020.**

**BY THE COURT:**

/s/ Rhys S. Hodge  
**RHYS S. HODGE**  
Chief Justice

**ATTEST:**

**VERONICA J. HANDY, ESQ.**  
**Clerk of the Court**