For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

ANGEL RODRIGUEZ, Appellant/Petitioner, v. **BUREAU OF CORRECTIONS, ET AL.,** Appellee/Respondent.	)	**S. Ct. Crim. No. 2017-0036** Re: Super. Ct. Civ. No. 705/2016 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Hon. Douglas A. Brady

Considered: April 10, 2018
Filed: March 26, 2019

Cite as: 2019 VI 10

BEFORE: **RHYS S. HODGE**, Chief Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **MICHAEL C. DUNSTON**, Designated Justice.

APPEARANCES:

Angel Rodriguez
Totweiler, MS
Pro Se,

Su-Layne Walker, Esq.
Assistant Attorney General
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St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 Angel Rodriguez appeals from the Superior Court's denial of his petition for habeas corpus.

For the reasons that follow, we affirm.

I. BACKGROUND

¶ 2 The facts leading to this appeal are already detailed in a decision by this Court on a previous appeal by the same name. *Rodriguez v. Bureau of Corrections*, 58 V.I. 367, 369-71 (V.I. 2013) (hereinafter "*Rodriguez I*"). As we summarized the factual background in that case:

> On August 9, 1987, Rodriguez shot and killed Rafael Velez near a housing project on St. Croix. Apparently, Velez had been in the area of the project threatening to kill an unspecified person. When Rodriguez arrived on the scene in a vehicle, Velez approached the vehicle and belligerently stated that he was going to kill someone. Rodriguez proceeded to shoot Velez in the chest. According to eyewitnesses who testified at the trial, Velez had no weapon. After being shot, Velez fled the scene, with Rodriguez in relentless pursuit. Eventually, Velez fell to the ground. Rodriguez proceeded to callously shoot Velez three more times as he lay defenseless on the ground. Rodriguez immediately gave his firearm to a friend, Ishmael Christian, instructing him to hide it. After Rodriguez and Christian departed the scene, Christian went home and hid the firearm in his backyard.
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> Subsequently, Rodriguez and Christian were apprehended by the police and both were charged in a multi-count Information with aiding and abetting each other in committing First Degree Murder and various other crimes. Later, the charges against them were severed. Thereafter, Rodriguez was charged separately with First Degree Murder in violation of title 14, sections 922(c)(1) and 11 of the Virgin Islands Code and Possession of an Unlicensed Firearm During the Commission of a Crime of Violence in violation of title 14, sections 2253(a) and 11 of the Virgin Islands Code. A jury trial was conducted in the District Court of the Virgin Islands ("District Court") at which several witnesses testified on behalf of the People of the Virgin Islands ("People") and on behalf of Rodriguez. On October 21, 1987, the jury adjudged Rodriguez guilty of both crimes. The District Court entered its Judgment and Commitment on October 22, 1987.
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> On October 27, 1987, Rodriguez appealed his convictions to the United States Court of Appeals for the Third Circuit ("Third Circuit"), which affirmed his convictions and the Judgment of the District Court on May 2, 1988. On September 8, 2005, more than seventeen years later, Rodriguez filed a Petition for a Writ of Habeas Corpus in the Superior Court of the Virgin Islands. The Petition was denied by the Superior Court on June 29, 2007. On February 15, 2008, Rodriguez filed both a Motion to Reconsider the denial of the Petition and a Motion for a New Trial. In an Order dated February 27, 2008, the Superior Court denied the Motion for a New Trial as untimely and denied the Motion for Reconsideration because of a lack of specific allegations or a basis for reconsideration of its order. Rodriguez timely appealed the February 27, 2008 Order.

Rodriguez I, 58 V.I. at 369-71. On April 29, 2013, this Court affirmed the Superior Court's February 27, 2008 order denying Rodriguez's motion for a new trial and denying his petition for a writ of habeas corpus. *Rodriguez I*, 58 V.I. at 377.

¶ 3 On December 23, 2016, Rodriguez filed another petition for a writ of habeas corpus with the Superior Court.[1] Finding that Rodriguez "once again confoundingly alleged a myriad of issues"—namely, sufficiency of the evidence which had "already [been] considered and rejected by: 1) the District Court of the Virgin Islands Appellate Division on direct appeal; 2) the United States Court of Appeals for the Third Circuit on direct appeal; 3) the Superior Court of the Virgin Islands through his 2005 Petition for Habeas Corpus; and 4) [this Court] on appeal from the denial of the 2005 petition for Habeas Corpus"—the Superior Court denied the petition in a January 26, 2017 order. (J.A. 2-3) (alteration and internal quotation marks omitted). On March 20, 2017, Rodriguez filed a timely[2] appeal with this Court. V.I. R. APP. P. 5(a)(1).

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[1] Rodriguez also filed a "Motion to Suppress Pursuant to Petitioner['s] Confrontation Clause Right to the Fifth Amendment." Finding that the motion simply restates claims Rodriguez argues in his petition for writ of habeas corpus, the Superior Court summarily denied the motion. Upon review of Rodriguez's appellate materials, this Court agrees that the issues raised in both the motion to suppress and petition for a writ of habeas corpus are intertwined, and we therefore consider both within the context of Rodriguez's petition for habeas corpus. *See Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011) ([T]he substance of a motion, and not its caption, shall determine under which rule the motion is construed.").

[2] The People assert that Rodriguez's appeal was untimely because he filed it 53 days after the Superior Court entered its order dismissing his petition, which is outside of the 30-day limit that V.I. R. APP. P. 5(a)(1) imposes for civil appeals. Rule 5(a)(1) further provides, however, that "if the Government of the Virgin Islands . . . or an officer or an agency thereof is a party, the notice of appeal may be filed within 60 days after such entry." Pursuant to section 4503(a) of title 5, of the Virgin Islands Code, the Bureau of Corrections is an entity within the Virgin Islands Government. *See* 5 V.I.C. § 4503(a) ("A Bureau of Corrections is continued as an independent bureau *within* the Executive Branch of the Government.") (emphasis added). Additionally, this Court has already applied the Rule 5(a)(1) 60-day period in a previous case involving these same parties. *See Rodriguez v. Bureau of Corrections*, 58 V.I. 367, 373 (V.I. 2013) ("Rodriguez did not directly appeal the denial of his Petition for Writ of Habeas Corpus to the Supreme Court within

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 4 This Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a) (granting this Court jurisdiction over "all appeals arising from final judgments, final decrees or final orders of the Superior Court"). Because the Superior Court's January 26, 2017 order against Rodriguez was a final order, this Court has jurisdiction over this appeal. *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013); *see also Suarez v. Gov't of the V.I.*, 56 V.I. 754, 758 (V.I. 2012) ("An order denying a petition for a writ of habeas corpus is a final order . . . from which an appeal may lie."). We review the Superior Court's denial of Rodriguez's habeas corpus petition *de novo*. *Rodriguez I*, 58 V.I. at 371.

B. Perjured Testimony and Prosecutorial Misconduct

¶ 5 Rodriguez contends that the Superior Court erred when it dismissed his most recent petition for writ of habeas corpus after determining that it was procedurally barred.[3] We disagree.

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sixty (60) days as provided in Supreme Court Rule 5(a)(1)."). Therefore, by filing his notice of appeal 53 days after the Superior Court's final order denying his petition, Rodriguez satisfied the Rule 5(a)(1) 60-day requirement, and his appeal is timely.

[3] Pursuant to *George v. Wilson*, 59 V.I. 984, 990 (V.I. 2013), "the People have the burden of pleading abuse of the writ," which it will satisfy when it "notes the petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ." The Superior Court nonetheless applied the abuse of the writ doctrine here—despite the People having not pled it. In doing so, the Superior Court opined that requiring the People to respond to Rodriguez's petition when it is "obvious to the Court *ab initio*" (J.A. 4 n.4) that the petition violates the abuse of the writ doctrine and runs contrary to the "principal purpose and function of the doctrine, [which] is to prevent repetitive petitioners from 'needlessly overburdening the judicial system.'" (J.A. 3) (quoting *George*, 59 V.I. at 990). Normally, this Court deems defenses not raised below as waived. V.I. R. APP. P. 22(m). As the People explain in their brief, the Superior Court issued its opinion invoking the abuse of the writ doctrine "prior to any input from the People as the allotted time for responding had not expired." Appellee's Br. 10. This Court recognized the

¶ 6 "[U]nder Virgin Islands law, a petition for writ of habeas corpus should be granted and the matter set for an evidentiary hearing on the merits if the petitioner has set forth a prima facie case for relief, and the petition is not procedurally barred." *Mosby v. Mullgrav*, 65 V.I. 261, 265 (V.I. 2016) (citing *Rivera-Moreno v. Gov't of the V.I.*, 61 V.I. 279, 313 (V.I. 2014)). In *Rodriguez I*, we held, without referring to the abuse of the writ doctrine, that when a petition for such a writ merely repackages the same arguments that a court has already reviewed on direct appeal or in a previous writ, it is procedurally barred. *Rodriguez I*, 58 V.I. at 376-77. Later, in *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 378 (V.I. 2016), we explained that "where a petitioner properly raised an issue on direct appeal to this Court, and this Court rejected it on the merits, the petitioner is procedurally barred from re-litigating that issue through a habeas petition." A petitioner may overcome an otherwise applicable procedural bar in seeking the writ if he can show that a "'fundamental miscarriage of justice would result from a failure to entertain the claim.'" *George*, 59 V.I. at 990 (quoting *Wise v. Fulcomer*, 958 F.2d 30, 34 (3d Cir. 1992)).[4]

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same scenario in *Hughley v. Gov't of the V.I.*, 61 V.I. 323, 337 (V.I. 2014), and indicated that because "the Government's failure to plead [was] likely directly attributable to the Superior Court *sua sponte* denying [Petitioner's] petition before the time for the Government to file an answer expired," the defense was not forfeited. For the same reason, we find that the People did not waive its abuse of the writ doctrine defense in this case. *See id*. We further note that, although not applicable to this case, Rule 2(k) of Virgin Islands Habeas Corpus Rules—effective December 1, 2017—provides the Superior Court discretion to reject a successive filing upon its own motion. V.I. H.C.R. 2(k) ("[T]he Superior Court may reject a successive petition only if the Government pleads and demonstrates, *or the court finds on its own motion*, that the successive filings are an abuse of discretion.") (emphasis added). Accordingly, for successive habeas corpus petitions governed by Rule 2(k), the Superior Court may reject such petitions without the requirement that the Government first plead abuse of the writ. *Id*.

[4] On December 1, 2017, the Virgin Islands Habeas Corpus Rules took effect. Rule 2(k) governs successive positions and includes, in its entirety, the following:

> A petitioner should raise all then-available legal grounds in support of the writ of habeas corpus in the initial application; *provided, however*, that successive habeas

¶ 7 Rodriguez raises two due process issues in his current petition for writ of habeas corpus. The first is that his former co-defendant, Christian, provided perjured testimony at the 1987 trial. The second is that the prosecutor engaged in misconduct by eliciting Christian's alleged perjured testimony. Rodriguez believes that Christian lied under oath in exchange for a reduced sentence. According to Rodriguez, Christian gave prior inconsistent statements outside of court, and the statement he gave in the presence of the jury that inculpated Rodriguez was perjured.[5]

¶ 8 "[T]o establish a due process violation based on a state's solicitation of, or failure to correct, false evidence, a defendant must show: (1) the falsity and materiality of testimony, and (2) prosecutor's knowledge of such falsity." *Rodriguez I*, 58 V.I. at 375 (citing *Bell v. True*, 413

> corpus petitions may be filed. In a later petition, any ground for relief that has been ruled upon by the Supreme Court of the Virgin Islands on a prior direct appeal will be barred. If a subsequent petition is not legally barred on the merits or procedurally, the Superior Court may reject a successive petition only if the Government pleads and demonstrates, or the court finds on its own motion, that the successive filings are an abuse of the writ process (or violate similar common law standards for striking repetitive baseless, improper, harassing, or frivolous applications); this is an equitable issue and the decision to invoke the abuse-of-writ doctrine to preclude a subsequent habeas corpus petition is vested in the sound discretion of the Superior Court, which shall set forth its reasons for so ruling and must explain its consideration of all relevant circumstances and factors, including the petitioner's prior writ history, the merits of the claim, and the reasons for raising new arguments or attempting to relitigate prior unsuccessful arguments.

V.I. H.C.R. 2(k) (emphasis in original). Although Rule 2(k) is directly applicable to the facts of this case, we cannot invoke it because Rodriguez filed his latest petition for writ of habeas corpus before the Virgin Islands Habeas Corpus Rules took effect. *See Chinnery v. People*, 55 V.I. 508, 525 (V.I. 2011) ("Ordinarily, 'this Court applies on appeal the . . . rules that were in effect at the time [the defendant] was tried in the Superior Court.") (quoting *Blyden v. People*, 53 V.I. 637, 658 n.15 (V.I. 2010)).

[5] Rodriguez does not appear to consider the alternative; Christian's previous statements were dishonest and his trial testimony was truthful. *See Rodriguez I*, 58 V.I. at 375 ("It is equally possible that the co-defendant's prior inconsistent statements were untrue and his trial testimony was true.").

F.Supp.2d 657, 677 (W.D. Va. 2006) and *Basden v. Lee*, 290 F.3d 602, 614 (4th Cir. 2002)). Both of the due process arguments Rodriguez presents here are identical to those he raised in his previous habeas petition to this Court. *Id*. at 374-75. Analyzing the same perjured testimony assertions in *Rodriguez I*, this Court held that Rodriguez failed to prove that Christian provided false testimony. *Id*. at 375 ("Even if such evidence [that Christian made several prior inconsistent statements] proved that [Christian] was mendacious at some juncture in the case, it does not prove that his trial testimony was false."). We further explained that "Rodriguez presented no evidence that, even if the testimony provided in court was false, the prosecutor knew of such falsity." *Id*. Given that this Court has already reviewed the same issues and determined that Rodriguez failed to establish either of the elements required to prove prosecutorial misconduct based on a state's solicitation of, or failure to correct false evidence, we hold that his current petition is successive and procedurally barred. *Id*. at 375 ("Based on our examination of the trial record, we conclude that the trial court correctly decided that Rodriguez failed to establish either of these requirements."); *Blyden*, 64 V.I. at 378.

C. Sufficiency of the Evidence

¶ 9 In addition to the perjured testimony and prosecutorial misconduct claims, in his current habeas petition Rodriguez also raises several sufficiency of the evidence arguments stemming from his general belief that the People did not prove his guilt beyond a reasonable doubt. *See Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011) (explaining that this Court has consistently held that the substance, not the title, of a motion determines its meaning). In order to resolve this issue, we must first settle the scope of the habeas corpus writ in the Virgin Islands.

¶ 10 The right to habeas corpus is enshrined in section 3 of the Revised Organic Act of 1954, and implemented through the Virgin Islands habeas corpus statute, codified at 5 V.I.C. §§ 1301-

25. Based on similar provisions found in the 1921 Code, the Virgin Islands habeas corpus statute explains the process by which it shall be implemented, and limits the circumstances under which a court may order the discharge of the petitioner. 5. V.I.C. §§ 1301-25. The first section of the habeas chapter in title 5 of the Virgin Islands Code states:

> Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

5 V.I.C. § 1301.

¶ 11 Section 1314 provides the limited circumstances under which a petitioner could succeed on a habeas writ and therefore be discharged from confinement. It states:

> 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 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.

¶ 12 The language of our habeas corpus statute, as adopted as part of the 1921 Code, "strictly limited the availability of the writ to those circumstances specifically provided in section 1314 of title 5, and did not permit petitioners to raise in their habeas petitions complaints about the sufficiency of the evidence or general trial irregularities." *Rodriguez I*, 58 V.I. at 382 (Hodge, C.J., concurring). Relying on decisions of federal and state supreme courts, including those construing provisions upon which our habeas statute was modeled, this Court observed in *Rodriguez I* that a "significant number of state courts have refrained from addressing sufficiency of the evidence claims in petitions for writ of habeas corpus, finding that such matters should be addressed on direct appeal where the reviewing court can issue a writ of error." *Rodriguez I*, 58 V.I. at 375-76 (collecting cases); *see also Chinnery v. People*, 55 V.I. 508, 519 n.6 (V.I. 2011) ("Where a Virgin Islands statue is patterned after a statute from another jurisdiction, the borrowed statute shall be construed to mean what the highest court from the borrow statute's jurisdiction, *prior* to the Virgin Islands enactment, construed the statute to mean.") (emphasis in original) (internal quotation marks omitted); *Rivera-Moreno*, 61 V.I. at 296 (recognizing the persuasive authority of the Supreme Court of California's interpretation of its habeas statute when interpreting our own); *Ex parte Bird*, 19 Cal. 130 (Cal. 1861) (emphasizing that California's habeas laws were "not framed to retry issues of fact, or to review the proceedings of a legal trial"). Indeed, many jurisdictions interpreting their own habeas statutes have held that habeas petitioners are foreclosed from raising insufficiency of the evidence claims via applications for the writ. *See generally* 39 C.J.S. *Habeas Corpus* § 163 ("Generally, questions relating to the sufficiency of the evidence to support a conviction may not be raised in state habeas corpus proceedings, and such proceedings may not serve as a substitute for a writ of error or an appeal.").

¶ 13 Nevertheless, our decision in *Rodriguez I* did not foreclose habeas petitions from raising sufficiency of the evidence claims; rather, our decision rested on the fact that "Rodriguez [wa]s simply endeavoring to repackage his argument of 'insufficiency of the evidence' in his petition for a writ of habeas corpus" that "ha[d] already been reviewed and decided by the Third Circuit in his direct appeal more than two decades ago." 58 V.I. at 376. Notably, we later explained in a subsequent case that our habeas statute permits "challenges to the sufficiency of the evidence when not otherwise procedurally barred, since a conviction based on insufficient evidence presents an error of constitutional dimension that must be remedied," but that the petition in *Rodriguez I* had in fact been procedurally barred because the sufficiency argument had been addressed on direct appeal. *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 376-77 & n.6. Our interpretation of the scope of the habeas remedy in *Blyden* is consistent with the more expansive view the United States Supreme Court has taken since the predecessor to our habeas statute was first adopted in 1921. *Rodriguez I*, 58 V.I. at 385-87.

¶ 14 In 1954, as part of the Virgin Islands Revised Organic Act, Congress enacted a Suspension Clause, stating that "[a]ll persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided." Revised Organic Act § 3, 48 U.S.C. § 1561. Prior to the adoption of the Revised Organic Act, Justice Frankfurter noted in *Sunal v. Large*, 332 U.S. 174, 186 (1947), that the United States Supreme Court had, in various cases, permitted the use of habeas to address, *inter alia*, the insufficiency of the evidence to support a conviction where "no other remedy was available and the error appeared flagrant." (Frankfurter, J. dissenting) (collecting cases). It is reasonable to presume that at the time Congress adopted the Revised Organic Act with its habeas provision, "it intended that the right in this Territory be interpreted consistent with the common law understanding of the writ at the time of the enactment

of the ROA." *Rodriguez I*, 58 V.I. at 384 (Hodge, C.J. concurring). Because Congress understood the privilege of habeas corpus to be broader than the statutory habeas laws adopted in the 1921 Code, it's formulation of the privilege as part of the Revised Organic Act supersedes any more restrictive local statutory law. *Id*. at 383 (Hodge, C.J., concurring); 48 U.S.C. § 1561 ("All laws enacted by Congress with respect to the Virgin Islands and all laws enacted by the territorial legislature of the Virgin Islands which are inconsistent with the provisions of [Section 3 of the Revised Organic Act] are repealed to the extent of such inconsistency."). Therefore, at minimum, when Congress enacted the ROA, "the constitutional right to habeas corpus in the Virgin Islands include[ed] the right to challenge the sufficiency of the evidence where 'no other remedy [is] available and the error appear[ed] flagrant." *Rodriguez*, 58 V.I. at 384 (Hodge, C.J., concurring) (citing *Sunal*, 332 U.S. at 186).

¶ 15 In the years following the adoption of the ROA, but prior to the enactment of the federal Anti-Terrorism and Effective Death Penalty Act of 1996, the United States Supreme Court continued to ease limitations on review of sufficiency of the evidence in habeas proceedings by abandoning the flagrant error condition. *Id*. at 385; *In re Winship*, 397 U.S. 358, 364 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."). Relying on *In re Winship*, the United States Supreme Court held in *Jackson v. Virginia*, 443 U.S. 307, 319-21 (1979), that a violation of due process—that is, a conviction on insufficient evidence—is remediable by way of habeas. (describing the standard of review of the record in a habeas proceeding as "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond

a reasonable doubt") (superseded by 28 U.S.C. § 2254(d))[6]; *Cf. Sunal*, 332 U.S. at 186. And because "this Court must apply the United States Supreme Court's interpretation of applicable constitutional rights, even those interpretations issued *after* Congress enacted the Revised Organic Act[,]" the United States Supreme Court's "interpretation of the Due Process Clause as encompassing challenges to convictions on the grounds of insufficient evidence controls in this Territory." *Rodriguez*, 58 V.I. at 385-86 (Hodge, C.J., concurring). Therefore, we hold that "a habeas petition addressing insufficient evidence . . . properly raises a constitutional claim and is cognizable in habeas corpus proceedings in the Virgin Islands courts" so long as it is "limited by judicially developed principles, such as the abuse of the writ doctrine." *Id*. at 386, 390; *Blyden*, 64 V.I. at 376-77.

¶ 16 Having concluded that Rodriguez is entitled as a matter of law to raise his sufficiency of the evidence claim in a habeas proceeding, we nonetheless find that Rodriguez is not entitled to relief. We came to this same conclusion in *Rodriguez I*, where Rodriguez raised a sufficiency of the evidence challenge in his previous petition. 58 V.I. at 376. Without addressing the merits of his sufficiency of the evidence claim, we concluded that because Rodriguez's petition was merely an attempt to repackage the same sufficiency of the evidence arguments he raised on direct appeal to the Third Circuit nearly two decades earlier, further review by this Court was precluded. *Id*.

¶ 17 Since then, however, this Court has declined to apply the abuse of the writ doctrine where previous review was not provided by *this* Court. *See Mosby*, 65 V.I. at 268 (explaining that "issues

[6] "Almost twenty years after the *Jackson* decision, the Anti-Terrorism and Effective Death Penalty Act of 1996 subsequently limited federal habeas review of issues already decided by state courts on direct review to those circumstances in which the state court unreasonably applied federal law, or made an unreasonable determination of the facts." *Rodriguez*, 58 V.I. at 385 n.9; Pub. L. No. 104-132, 110 Stat. 1218 (1996).

raised on direct appeal to the Appellate Division and the Third Circuit are not procedurally barred in a local habeas corpus action"); *Hughley v. Gov't of the V.I.*, 61 V.I. 323, 337 (V.I. 2014) (declining to apply the abuse of the writ doctrine where an issue raised in a habeas corpus petition had been resolved in a prior appeal on the merits to the Third Circuit because "the Third Circuit itself has held that the very creation of this Court constitutes genuinely exceptional circumstances for disregarding . . . prior decisions of the Appellate Division and the Third Circuit, even in cases involving the same parties") (quoting *Hodge v. Bluebeard's Castle, Inc.*, 329 Fed. Appx. 965, 975 (3d Cir. 2010)). But unlike the procedural histories in *Mosby* and *Hughley*, this Court has in fact provided Rodriguez with such review, in that we held in *Rodriguez I* that the very same sufficiency of the evidence claim he is attempting to raise in this proceeding was procedurally barred. 58 V.I. at 376. In any case, we reiterate our prior holding that the categorical rejection of the rulings of other competent reviewing federal courts is not the best rule for addressing local habeas actions.

¶ 18 Our subsequent decisions in *Hughley*, *Mosby*, and other cases did not alter the result or reasoning of our *Rodriguez I* decision.[7] While the principle of *res judicata* does not apply to habeas

[7] In announcing in *Hughley* that the general bar on successive habeas petitions did not apply, we emphasized that "the very creation of this Court constitutes genuinely exceptional circumstances for disregarding . . . prior decisions of the Appellate Division and the Third Circuit." 61 V.I. at 337. More importantly, we emphasized that we were establishing such an exception due to the unique role this Court serves in the development of Virgin Islands jurisprudence as the court of last resort for the Virgin Islands, whose interpretation of Virgin Islands law is final and shall govern notwithstanding contrary interpretations of Virgin Islands law by the federal courts. *Id.* at 337-38. And in *Rivera-Moreno* and *Mosby*, we held that the exception announced in *Hughley* was implicitly limited to issues that implicate this Court's role as the court of last resort for the Virgin Islands, holding "that a habeas corpus petition could raise issues that were, or could have been, raised on direct appeal to the Appellate Division or the Third Circuit, without proving extenuating circumstances, provided that the issues involve a question of law rather than a question of fact." *Mosby*, 65 V.I. at 266-67 (citing *Rivera-Moreno*, 61 V.I. at 303). And while in *Mosby* we relied on our decisions in *Hughley* and *Rivera-Moreno* in holding that the fact that the Appellate Division and Third Circuit had affirmed the petitioner's convictions did not establish a "*per se*" or "categorical" ban on consideration of the legal issues raised, 65 V.I. at 266, it does not naturally

proceedings, the United States Supreme Court has recognized that "judicially evolved principles may limit habeas." *Rodriguez I*, 58 V.I. at 388 (Hodge, C.J., concurring). As the United States Supreme Court has explained, courts must dispose of habeas petitions by applying "sound judicial discretion guided and controlled by a consideration of whatever has a rational bearing on the propriety of the discharge sought." *Sanders v. United States*, 373 U.S. 1, 9 (1963). It follows that "a court may consider, and in appropriate cases give controlling weight to, the fact that another court has already fully considered and decided the issue against the petitioner." *Rodriguez I*, 58 V.I. at 388 (Hodge, C.J., concurring); *See McCleskey v. Zant*, 499 U.S. 467, 479–80 (1991) (citing *Ex parte Cuddy*, 40 F. 62 (C.C.S.D.Cal.1889)) (recognizing that when a second habeas petition is based on the same facts that were presented, or could have been presented, in the first petition, the court can take that into consideration and may refuse to entertain the subsequent habeas petition). Indeed, our new habeas corpus rules emphasize that a court's decision to deny a successive habeas petition is an equitable one and is vested in the sound discretion of that court. V.I. H.C.R. 2(k).[8]

¶ 19 In reaching this decision, we again emphasize that there is no *per se* or categorical ban on the filing of a successive habeas corpus petition in the Virgin Islands. But while we appreciate the fundamental importance of a prisoner's right to habeas corpus, and recognize that such a right may

follow from the fact that such claims are not always procedurally barred that they can never be procedurally barred.

[8] While our new rules were adopted after Rodriguez filed his petition and are therefore inapplicable to this case, they implicate the same concepts of discretion articulated by the United States Supreme Court in *Sanders* and *McCleskey*, which while not binding in that they concerned the right to habeas relief in federal courts, are nevertheless highly persuasive with respect to how our local habeas statute should be interpreted. More importantly, those concepts of discretion are also consistent with the rule we already announced in *Rodriguez I* with respect to the very same sufficiency claims that Rodriguez attempts to raise in this proceeding.

not be suspended, we equally understand the practical necessity to avoid unnecessarily consuming scarce judicial resources by rehashing the same arguments already duly considered and decided by a competent court.[9] Therefore, we conclude that when a prisoner files a writ of habeas corpus in the Virgin Islands alleging claims already reviewed by another competent court, including a federal court, the local court may, in its discretion, consider that ruling as a basis to deny improper successive review.[10] Applying this rule here, we hold that the sufficiency of the evidence claim

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[9] The determination as to whether a previously-raised claim is procedurally barred because it was duly considered and decided by a competent court is dependent on the nature of the claim. As we recognized in *Hughley*, *Rivera-Moreno*, and *Mosby*, adjudications by Appellate Division and the Third Circuit will typically not result in a procedural bar if the claim involves a question of law that is appropriate for disposition by this Court in its capacity as the final arbiter of Virgin Islands law. However, the Appellate Division and the Third Circuit may certainly serve as competent courts with respect to decisions involving claims that are wholly or predominantly fact-based.

Here, unlike *Hughley*, *Rivera-Moreno*, and *Mosby*, where the petitioners raised purely legal questions, the sufficiency of the evidence claim raised by Rodriguez is, at its heart, a factual inquiry. *See Russell v. State*, No. 07-601, 2007 WL 3197324, at *2 (Ark. Nov. 1, 2007) (unpublished) ("Appellant's allegations are in essence challenges to the sufficiency of the evidence that was used to support the verdict and that type of challenge requires the type of factual inquiry not appropriate to a habeas proceeding."). Although a sufficiency claim may transcend the facts when it requires consideration of an unresolved question of Virgin Islands law, *see, e.g.*, *Tyson v. People*, 59 V.I. 391 (V.I. 2013) (reversing felony-murder conviction on sufficiency grounds after determining that the felony-murder statute is limited by the agency theory of the felony murder rule), Rodriguez's claim—which is effectively an argument that the jury should have credited his evidence over that presented by the government—does not do so. Since the sufficiency argument in Rodriguez's petition is a fact-based claim that does not in any way implicate the role of this Court as the court of last resort for the Virgin Islands with the final say on issues of Virgin Islands law, or is otherwise appropriate for disposition by this Court notwithstanding the rejection of those claims by other tribunals, and Rodriguez has failed to provide any legitimate reason for why the decisions of the Third Circuit resolving that fact-based claim on direct appeal should be disregarded, we again conclude, as we did in *Rodriguez I*, that Rodriguez's sufficiency claim is procedurally-barred.

[10] The concurring opinion urges us to overrule the portions of *Mosby* and other decisions providing that there is no *per se* or categorical ban on successive habeas petitions because doing so would provide greater clarification to the Superior Court "on when to apply relevant procedural bars to raising issues previously decided on appeal." We decline to do so because to hold that every single criminal conviction for violation of a Virgin Islands statute ever upheld by the Appellate Division or the Third Circuit—no matter how erroneous—can never be reexamined by this Court under any

that Rodriguez raises once again in his current petition now before this Court is procedurally barred. The Third Circuit already affirmed Rodriguez's conviction on direct appeal, and the general claim of insufficiency of the evidence he presents here does not provide us any reason to deviate from that ruling. Therefore, we affirm the Superior Court's denial of Rodriguez's habeas petition.

III. CONCLUSION

¶ 20 Because this Court already addressed Rodriguez's due process claims of perjured testimony and prosecutorial misconduct in addressing his previous petition seeking a writ of habeas corpus, we decline further review of those claims under the abuse of the writ doctrine. Further, because the Third Circuit held on direct appeal that there was sufficient evidence to convict Rodriguez of first degree murder and possession of an unlicensed firearm during the commission of a crime of violence, we decline to address this same sufficiency of the evidence challenge as raised in the current petition for habeas corpus relief; consideration by this Court of this fact-based claim would not in any way implicate the role of this Court as the court of last resort for the Virgin Islands with the final say on issues of Virgin Islands law. Accordingly, we affirm the Superior Court's denial of Rodriguez's petition for writ of habeas corpus.

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circumstances would be tantamount to abdicating our role as the court of last resort of the Virgin Islands, and effectively confer upon those federal courts the final authority on the interpretation of Virgin Islands law. Such a decision would also have the effect of treating habeas petitioners convicted prior to the establishment of this Court, or who were convicted in the United States District Court pursuant to its supplemental criminal jurisdiction, differently from habeas petitioners convicted in the Superior Court whose convictions were appealable to this Court, in potential violation of the Revised Organic Act's guarantee of equal protection. *See Mitchell v. Mullgrav*, 67 V.I. 953, 963 (V.I. 2017).

Dated this 26th day of March 2019.

BY THE COURT:

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

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

DUNSTON, Designated Justice, concurring.

¶ 21 I concur with the majority's conclusion that we should not further address Rodriguez's habeas claims for relief. I write separately, however, because I believe that the Superior Court

needs clearer guidance on the scope of the *abuse of the writ doctrine*, including clarification on when to apply relevant procedural bars to raising issues previously decided on appeal.

¶ 22 The U.S. Supreme Court has recognized that "judicially evolved principles may limit habeas." *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 387 (V.I. 2013) (Hodge, C.J., concurring) (citing *Sanders v. United States*, 373 U.S. 1, 9 (1963)); *McCleskey v. Zant*, 499 U.S. 467, 479-80 (1991) (citing *Ex parte Cuddy*, 40 F. 62 (C.C.S.D.Cal. 1889)). Specifically, "where a habeas petitioner presents a claim already fully considered and decided against him by a competent court, that fact may be considered by the reviewing court, and may serve as the basis for the denial of the petition." *Rodriguez*, 58 V.I. at 388 (internal citations omitted).

¶ 23 In addition to these "judicial principles," this Court adheres to the U.S. Supreme Court's line of cases that apply the abuse of the writ doctrine. *Id.* at 389:

> Where a petitioner files a second petition raising issues which could have been raised in the first petition, the court need not entertain those claims . . . This principle is equally applicable to the courts of the Virgin Islands. It is the government's initial burden to plead abuse of the writ.

Id. (citing *Price v. Johnston*, 334 U.S. 266, 287-93 (1948)). The Virgin Islands codified its abuse of the writ doctrine in August 2017 with Promulgation No. 2017-0008, "Adoption of the Virgin Islands Habeas Corpus Rules." Rule 2(k) provides:

> In a later petition, *any ground for relief that has been ruled upon by the Supreme Court of the Virgin Islands on a prior direct appeal will be barred*. If a subsequent petition is not legally barred on the merits or procedurally, the Superior Court may reject a successive petition only if the Government pleads and demonstrates, or the court finds on its own motion, that the *successive filings are an abuse of the writ process* . . . this is an equitable issue and the *decision to invoke the abuse-of-writ doctrine to preclude a subsequent habeas corpus petition is vested in the sound discretion of the Superior Court*.

V.I. H.C.R. 2(k) (emphasis added).

¶ 24 This Court has issued several important, yet differing opinions on the application of the abuse of the writ doctrine and procedural bars to habeas relief. In *George v. Wilson*, we emphasized that repeat habeas petitions are disfavored absent prejudice to the petitioner, particularly where a matter was "ruled upon . . . and affirmed." *George v. Wilson*, 59 V.I. 984, 990-91 (V.I. 2013). We reiterated the importance of this principle in *Rivera-Moreno v. Gov't of the V.I.*: "[T]he equitable principle . . . prohibits multiple successive habeas corpus petitions . . . unless the petitioner can show 'cause and prejudice.'" 61 V.I. 279, 303 (2014). And, in yet another case, we clarified the procedural bar to re-litigating in subsequent habeas petitions issues previously raised in this Court: "Where a petitioner properly raised an issue on direct appeal to this Court, and this Court rejected it on the merits, the petitioner is procedurally barred from re-litigating that issue through a habeas petition." *Blyden v. Gov't of the V.I.*, 64 V.I. 367, 377 (V.I. 2016) (citing *In re Harris*, 855 P.2d 391, 398 (Cal. 1993)).

¶ 25 But, in *Mosby v. Mullgrav*, we severely limited the application of the abuse of the writ doctrine by restricting, in my opinion inappropriately, the procedural bar to only those issues previously raised to *the Virgin Islands Supreme Court*:

> [W]e reiterate that issues raised on direct appeal to the Appellate Division and the Third Circuit are not procedurally barred in a local habeas corpus action. . . . [T]he fact that the Appellate Division and the Third Circuit affirmed [a habeas petitioner's] convictions does not establish a procedural bar providing that [a petitioner] is *per se* banned from seeking habeas relief.

65 V.I. 261, 268 (V.I. 2016) (citing *Rivera-Moreno*, 61 V.I. at 311).

¶ 26 Today the majority recognizes that since *Mosby*, we have declined to apply the abuse of the writ doctrine where previous review was not provided by this Court. *Supra* ¶ 17. Yet the majority simultaneously decides that the "categorical rejection of the rulings of other competent reviewing federal courts is not the best rule for addressing local habeas actions." *Id.* In its holding,

the majority sacrifices clarity in its guidance to the Superior Court in clearly contradicting *Mosby*: "[t]herefore, we conclude that when a prisoner files a writ of habeas corpus in the Virgin Islands alleging claims already reviewed by another competent court, including a federal court, the local court may, in its discretion, consider that ruling as a basis to deny improper successive review." *Supra* ¶ 19. I agree that our holding is a statement of a "better rule" for the Virgin Islands, and I would enhance the clarity of our guidance by specifically overruling *Mosby* to the extent *Mosby*'s language is inconsistent with our decision here. Because the majority creates confusion by contradicting *Mosby* without specifically overruling it, I respectfully decline to join the reasoning of this opinion, and I concur in the judgment only.

/s/ Michael C. Dunston
MICHAEL C. DUNSTON
Designated Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court