No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

RONNIE LEE BOWLING, Petitioner,

v.

RANDY WHITE (Warden), Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ADVERSELY AFFECTED "CAPITAL CASE"

MR. RONNIE LEE BOWLING
PRISON ID: 032861
DEATH ROW CELL 6-G-2
KENTUCKY STATE PENITENTIARY
266 WATER STREET
EDDYVILLE, KENTUCKY 42038-7737

Pro Se Petitioner

December 7, 2017

ADVERSELY AFFECTED "CAPITAL CASE"

QUESTION(S) PRESENTED

GRANT certiorari because compelling reasons do exist for the Court's discretionary jurisdiction. The lower court(s) are erroneous, but national importance of having the Court decided questions involved. A case about 28 U.S.C. § 2254(a) "in custody." The Sixth Circuit Court [majority] decision greatly conflicts with this Court's precedent [and] every single United States Court of Appeals. Bowling and others similarly situated the lower court decision affects.

I.] MAY BOWLING'S § 2254 PETITION, GAVE DEFERENCE TO WHICH PRO SE LITIGANTS ARE ENTITLED, HAINES V. KERNER, 404 U.S. 519 (1972), BE CONSTRUED AS ASSERTING A CHALLENGE TO THE 1992 [CAPITAL] LAUREL COUNTY CASE [CONVICTION & SENTENCE], HE IS CURRENTLY SERVING, AS BEING ADVERSELY & UNCONSTITUTIONALLY AFFECTED BY CONSTTTUTIONALLY INVALID ROCKCASTLE COUNTY CASE [EVIDENCE] WHICH "HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT," BRECHT V. ABRAHAMSON, 507 U.S. 619, 623 (1993), SATISFY § 2254(a) "IN CUSTODY" REQUIREMENT, SEE, MALENG V. COOK, 490 U.S. 488, 493-494 (1989); LACKAWANNA COUNTY DIST. ATTORNEY V. COSS, 532 U.S. 394 (2001); AND/OR, GARLOTTE V. FORDICE, 515 U.S. 39 (1995)?

II.] IS IT POSSIBLE A PRO SE LITIGANT MAY BE GAVE DEFERENCE UNDER HAINES V. KERNER, 404 U.S. 519 (1972), FOR NOT FILING SOONER WHEN THE TRIAL COURT FOR TEN (10) YEARS [NO MATTER HOW MANY REQUESTS WERE MADE FOR IT TO RULE] REFUSED WITHOUT JUSTIFICATION TO RULE ON HIS CONSTITUTIONAL CLAIMS, TO BE HELD "IN CUSTODY" UNDER § 2254(a), AS ASSERTING A CHALLENGE TO THE 1992 [CAPITAL] LAUREL COUNTY CASE [CONVICTION & SENTENCE], HE IS CURRENTLY SERVING, AS BEING ADVERSELY & UNCONSTITUTIONALLY AFFECTED BY CONSTITUTIONALLY INVALID ROCKCASTLE COUNTY CASE [EVIDENCE] WHICH "HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT," BRECHT V. ABRAHAMSON, 507 U.S. 619, 623 (1993), SATISFY § 2254(a) "IN CUSTODY" REQUIREMENT, SEE, MALENG V. COOK, 490 U.S. 488, 493-494 (1989); LACKAWANNA COUNTY DIST. ATTORNEY V. COSS, 532 U.S. 394, 405 (2001); AND/OR, GARLOTTE V. FORDICE, 515 U.S. 39 (1995)?

III.] DOES SHOWING THE FACTUAL PREDICATE FOR 16 OUT OF 30 OF BOWLING'S HABEAS CLAIMS [IN ROCKCASTLE COUNTY CASE] COULD NOT HAVE BEEN DISCOVERED PREVIOUSLY THROUGH THE EXERCISE OF DUE DILIGENCE; AND THE FACTS UNDERLYING THESE 16 CLAIMS, IF PROVEN AND VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE, WOULD BE SUFFICIENT TO ESTABLISH BY

CLEAR AND CONVINCING EVIDENCE THAT, BUT FOR CONSTITUTIONAL ERRORS, NO REASONABLE FACTFINDER WOULD HAVE FOUND BOWLING GUILTY AND/OR CASE AGAINST HIM WOULD HAVE BEEN DISMISSED WITH PREJUDICE [CLEARING BOWLING OF ANY WRONGDOING IN ROCKCASTLE CASE] - ESTABLISHING KRE 404(b) WOULD NOT AUTHORIZE USE OF ROCKCASTLE CASE [EVIDENCE] BEING INTRODUCED BY PROSECUTION INTO [CAPITAL] LAUREL COUNTY TRIAL - ESTABLISHING USE OF SAID EVIDENCE "HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT," BRECHT V. ABRAHAMSON,507 U.S. 618,623 (1993), SATISFY § 2254(a) "IN CUSTODY" REQUIREMENT, SEE, MALENG V. COOK,490 U.S. 488,493-494 (1989); LACKAWANNA COUNTY DIST. ATTORNEY V. COSS,532 U.S. 394,405 (2001), AND/OR, GARLOTTE V. FORDICE,515 U.S. 39 (1995) - WHICH ESTABLISHES A NEW TRIAL WOULD HAVE TO BE GRANTED IN THE CAPITAL CASE?

IV.] DOES FOURTEENTH AMENDMENT'S DUE PROCESS & EQUAL PROTECTION APPLY TO 6TH CIRCUIT COURT MAJORITY DECISION, BOWLING V. WHITE,NO. 15-6318 (6TH CIR.,JUNE 8,2017), REGARDING ITS' § 2254(a) "IN CUSTODY" DETERMINATION & DECISION TO AFFIRM U.S. DISTRICT COURT, WHICH HAS UNCONSTITTUTIONALLY SINGLED BOWLING OUT FOR DISPARATE TREATMENT & SET A REALLY BAD STANDARD FOR ALL PRISONERS, STATES & HABEAS PETITTIONERS, BECAUSE IT CONTRAVENES SETTLED PRECEDENT IN TWO AREAS: FIRST, BY GIVING "GREAT WEIGHT," ID. SLIP OP. 8, TO WARDEN'S "CONVENIENT LITIGATING POSITION" [WHICH HAS ZERO (0) SUPPORT FROM ANY CASE RECORD,CLAIMS: (A.) KDOC "RECALCULATED" ROCKCASTLE SENTENCE AWARDING IT THE 1,378 PRETRIAL CREDIT DAYS; (B.) KDOC HAS LISTED ROCKCASTLE SENTENCE START DATE AS 1989; (C.) KDOC HAS ROCKCASTLE SENTENCE LISTED "SERVED OUT"] & SECOND, FUNDAMENTALLY MISAPPREHENDS KENTUCKY LAW?

V.] DOES 6TH CIRCUIT COURT MAJORITY DECISION, BOWLING V. WHITE,15-6318 (6TH CIR.,JUNE 8,2017), WHICH GAVE "GREAT WEIGHT," ID. SLIP OP. 8, TO WARDEN'S LITIGATING POSITION, WHICH HAS CEMENTED THAT KDOC [THROUGH WARDEN RANDY WHITE'S LITIGATION POSITION] HAS MADE THE ROCKCASTLE SENTENCE "LONGEST UNEXPIRED TIME," KRS 532.120(1)(a), OVER LAUREL SENTENCES IN ORDER TO STATE IT IS "SERVED OUT" & HAS DISPOSED OF LAUREL SENTENCES, UNDER KRS 532.120(4), IN ORDER TO TAKE THE LAUREL CASE TIME AND "RECALCULATE" IT TO THE ROCKCASTLE SENTENCE, MEAN BOWLING MUST NOW BE RELEASED IN THE [CAPITAL] LAUREL COUNTY CASE THAT KENTUCKY HAS LOST ITS' JURISDICTION AND RIGHT TO FURTHER HOLD BOWLING IN PRISON?

VI.] DOES A SUSPENDED OR STAYED SENTENCE SATISFY § 2254(a) "IN CUSTODY" REQUIREMENT?

LIST OF PARTIES

1. Ronnie Lee Bowling, Prison ID# 032861, Death Row Cell 6-G-2, Kentucky State Penitentiary, 266 Water Street,Eddyville, Kentucky 42038-7737, is Petitioner. Mr. Bowling is Pro Se.

2. (Warden) Randy White, Respondent. Represented by Hon. Jason B. Moore, Assistant Attorney General, Office of the Kentucky Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort,Kentucky 40601, Phone: 502-696-5342, Fax: 502-696-5533, EMail: jason.moore2@ky.gov.

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Bowling v. White,480 S.W.3d 911 (Ky. 2015)-(Ky. S.Ct. answered U.S. Dist. Court's Question of Law - This question and its' answer does not apply to Bowling's case because KY DOC never did what warden's lawyers' then Dist. Ct. claim about somekind of "recalculation" awarding Bowling the 1,378 days pretrial custody credit in this Rockcastle case. KDOC only awarded that pretrial custody credit in Laurel case, KDOC Policy 28-01-08(II)(A)(2) & (6). Under Kentucky RCr 5.22(2) Bowling was indicted Mar. 17,1989,in Laurel case,(20 days after arrest) was not indicted in Rockcastle case until Apr. 29,1989 (63 days after arrest). RCr 5.22(2) after 60th day Bowling was released from custody when it failed to indict him in Rockcastle case, and,NO writing was ever entered in circuit court to hold the case over to the next grand jury).....H1-H7

Winstead v. Commonwealth,327 S.W.3d 479,483,489-491 (Ky. 2010)-(Kentucky's precedent on dealing with pretrial custody credit & sentence calculation. Kentucky's LEGISLATIVE & JUDICIAL branches gave KDOC complete authority to calculate pretrial custody credit & sentence calculation for Ky prisoners. KRS 532.120(3) was amended in 2011,replacing "by the court imposing the sentence" with "by the Department of Corrections." And in Winstead the Ky. S.Ct. held,"The Executive Branch,in the form of the Department of Corrections-not the judicial branch--is ultimately responsible for determining when prisoners in its custody are eligible for release." Id.,*483. The court further held, "...we now expressly depart from any unfortionate dicta in Viers [and any other similar case] that could be construed to constitute a holding that jail-time credit is part of a criminal defendant's sentence." Id.,*490,n.37. It held, "Jail-time credit is not in any sense a punishment imposed upon a criminal wrongdoer,nor is it either a fine or a term of imprisonment. Instead,a jail-time credit is information that helps the Department of Corrections carry out its statutorily mandated role to determine the minimum and maximum expiration dates for incarcerated offenders. Simply put, the dictionary definition of sentence and our predecessor court's definition of what constitutes a sentence both lead to the conclusion that an award of the jail-time credit is not actually part of a defendant's sentence even if the jail-time credit is included [or not included] in the final judgment of conviction." Id.,*490. Under KRS 532.120(9) prisoners have "administrative remedies." They file under KDOC Policy 17.4 & KDOC Policy 28-01-08(II)(A)(2) & (6), to learn KDOC exact position on their pretrial custody credit & sentence calculation. To "exhaust" [administrative remedies] under KRS 532.120(9) means the prisoner first files at the institution he is at [the way Bowling did at Kentucky State Penitentiary] then he appeals that to the Central Office over [all] KDOC at Frankfort,Ky [the way Bowling did]. Warden Randy White is only warden at Kentucky State Penitentiary, Eddyville,KY. Neither Warden White or his lawywers [Kentucky AG ofc] have final word for KDOC. Final word comes from Central Office over [all] KDOC in these "administrative remedy" appeals and Warden White is subject to his boss's decision that came from Central Office over all KDOC. [All],see Appendix M40-M78 [Bowling's KRS 532.120(9) "administrative remedy" responses from KDOC] responses in essence say the same: **(A.)** Bowling only got the 1,378 days pretrial custody credit in Laurel case, which is the exact amount of time between arrest,2/25/1989,and judgment entered in Laurel case,12/9/1992, because he was indicted first on that case and went

that evidence. Prosector argued in Laurel case this evidence was "evidence of guilt on this man." See,Laurel 24,3571-73,3577,3579-80,3583-92. See Alexander v. Com.,450 S.W.2d 803,810 (Ky. 1970); Little v. Com.,419 S.W.2d 322,334-5 (Ky. 1967). Habeas relief in Rockcastle case based on Habeas Claims 1,2 & 22 (speedy trial) would require the case against Bowling be dismissed with prejudice. This is legal exoneration which establishes KRE 404(b) would NOT authorize use of this Rockcastle case [evidence & prosecutor's prejudicial comments about evidence] in Laurel case. A new trial would have to be granted in Laurel case. This directly affects Bowling's present and future restraint).....K1-K5

Maleng v. Cook,490 U.S. 488 (1989)-(In Bowling's case, unlike Warden's lawyers' "convenient litigation position" [that had zero support from any record] in this case [all] records strongly proves: **(A.)** Bowling only got pretrial custody credit in Laurel case NOT in Rockcastle case for multiple reasons such as: **(i)** Kentucky RCr 5.22(2) Bowling was indicted on Mar. 17, 1989,in Laurel case (20 days after his arrest,2/25/89) and indicted Apr. 29, 1989 in Rockcastle case (63 days after arrest). Under RCr 5.22(2) after the 60th day with no indictment in Rockcastle case and no written document submitted to the circuit court to hold it over to the next grand jury-Bowling was released from custody on Rockcastle case and solely held on Laurel case. By the time the next Rockcastle case grand jury got around to indicting Bowling in Rockcastle case he was done being held on "other charges"; **(ii)** Under Kentucky's Lemon v. Corrections Cabinet,712 S.W.2d 370,371 (Ky. App. 1986), "K.R.S. 532.120(3) is only mandatory if the accused spends time in custody relating to a charge which ultimately culminates in a conviction. Therefore, a trial court is not usually required to give credit to time served as a result of other charges."; **(iii)** KDOC Policy 28-01-08(II)(A)(2) & (6), because Bowling went to trial first in Laurel case he was gave that 1378 days which is exact amount of time between arrest,2/25/1989, and judgment entered in Laurel case, 12/9/1992; **(iv)** Pursuant to KRS 532.120(9) gives prisoner's "administrative remedies" and Bowling exercised this right and [all] KDOC Central Office responses in essence say this same thing; **(B.)** As a concurrent sentence the Rockcastle sentence although judgment was not entered until May 7,1996,it related back in time to when judgment was entered in Laurel case,12/9/1992, as its' start date. Without the pretrial custody credit and starting on 12/9/1992 the 20-year-sentence would not have expired until 12/9/2012. Which means when Bowling filed habeas petition Sept. 6,2012,is before his sentence expired. See KRS 197.035,KRS 500.110(2),KRS 532.120(1); **(C.)** However under KRS 532.120(1)(a),the KDOC has listed this Rockcastle sentence,"will be satisfied upon the completion of your Death sentence." This is clear and and convincing evidence that strongly proves Bowling was not served out on this sentence. Also this is an attack upon the Laurel case as being adversely and unconstitutionally affected by constitutionally invalid Rockcastle case evidence [and prosecutor's prejudicial comments about that evidence] which "had a substantial and injurious effect or influence in determining the jury's verdict," Brecht v. Abrahamson,507 U.S. 619,623 (1993). A successful challenge to this Rockcastle case to Habeas Claims 1,2 & 22 (speedy trial) would require the case against Bowling be dismissed. or on the other habeas claims for a new trial. A reasonable probability exists upon re-trial Bowling would be found NOT guilty. There is no case left against him. The prosecutor's evidence has

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ADVERSELY AFFECTED "CAPITAL CASE"

Ronnie Lee Bowling, Petitioner, a Kentucky Death Row prisoner,respectfully petitions for a writ of certiorari to review the Opinion by United States Court of Appeals for the Sixth Circuit which in a split decision held he was not "in custody" under 28 U.S.C. § 2254(a) on Rockcastle County [,Kentucky] case at the time he filed his pro se habeas petition on September 6,2012.

OPINIONS BELOW

The Opinion by Sixth Circuit Court of Appeals, Bowling v. White,No. 15-6318, 2017 U.S. App. LEXIS 10437 (6th Cir.,June 8,2017, reh. den. July 12,2017), see, Appendix at A1 - A19. The Order denying rehearing or rehearing en banc, see, Appendix at B1. For other opinions & documents,see, Table of Appendices,at page iv.

JURISDICTION

GRANT certiorari to United States Court of Appeals for Sixth Circuit,No. 15-6318. This Court has jurisdiction under 28 U.S.C. § 1257(a) and Supreme Court Rule 13.3.

CONSTITUTIONAL, STATUTORY & APPLICABLE LAW

Petition involves 1st,5th,6th,8th & 14th Amendments to the United States Constitution; 28 U.S.C. § 2254(a)-("in custody"); 28 U.S.C. § 1331,1915(a) & 2201 -(Declaration of Rights); 28 U.S.C. § 2241(a)-("Writs of habeas corpus may be granted by the Supreme Court,any justice thereof") & all applicable law.

First Amendment to the United States Constitution provides as follows:

AMENDMENT I

Congress shall make no law respecting an establishment of religion,or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fifth Amendment to the United States Constitution provides as follows:

AMENDMENT V

No person shall be held to answer for a capital,or otherwise infamous crime,unless on a presentment or indictment of a grand jury,except in cases arising in the land or naval forces,or in the militia,when in actual service in time of war of public danger;nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life,liberty,or property,without due process of law; nor shall private property be taken for public use,without just compensation.

Sixth Amendment to the United States Constitution provides as follows:

AMENDMENT VI

In all criminal prosecutions,the accused shall enjoy the right to a speedy and public trial,by an impartial jury of the state and district wherein the crime shall have been committed,which district shall have been previously ascertained by law,and to be informed of the nature and cause of the accusation;to be confronted with witnesses against him;to have compulsory process for obtaining witnesses in his favor,and to have the assistance of counsel for his defense.

Eighth Amendment to the United States Constitution provides as follows:

AMENDMENT VIII

Excessive bail shall not be required,nor excessive fines imposed,nor cruel and unusual punishments inflicted.

Fourteenth Amendment to United States Constitution,in part,as follows:

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States,and

subject to the jurisdiction thereof,are citizens of the Unite States and of the state where they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;nor shall any state deprive any person of life,liberty,or property,without due process of law;nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Ronnie Lee Bowling's 1996 conviction in this case[FN1] is constitutionally invalid, he is "in custody in violation of the Constitution or laws or treaties of the United States," 28 U.S.C. § 2254(a).

The §2254 petition filed September 6,2012, asserts a challenge to the [capital] case[FN2] as being adversely & unconstitutionally affected by Rockcastle case [evidence]. Wrongfully-convicted & wrongfully-sentenced-to-death [Bowling 20-years-old]. It unconstitutionally "enhanced" prosecution's case in capital trial. Successful challenge to Rockcastle case shall exonerate Bowling which establishes KRE 404(b) would NOT authorize use of said evidence at capital trial. Due to the emphasis placed on this evidence a reasonable probability exists it "had a substantial and injurious effect or influence in determining the jury's verdict," Brecht v. Abrahamson,507 U.S. 619,623 (1993). This directly affects Bowling's present and future restraint. A new trial would have to be granted in capital case.

Bowling objected to Rockcastle case [evidence] in capital Laurel trial. Prosecutor responded: (Exclusion of Rockcastle case evidence **"would totally take away the Commonwealth's case against [Bowling]."** See Laurel case, Transcript of Evidence (TE) 4,at 463.

Laurel case's "direct appeal", Ky. S.Ct. held: ("We conclude that the jury m u s t weigh such evidence in establishing an element of the offense." A "reasonable probability that the crimes were committed by the same person. Rockcastle case [evidence] "was highly probative" in capital trial used "to

Footnote 1 - See Bowling v. Com.,96-SC-442 (Ky. 1998). The "Rockcastle County case" went to trial in 1996. Bowling's pro se §2254 petition in it filed 9/6/2012.
Footnote 2 - See Bowling v. Com.,942 S.W.2d 293 (Ky. 1997). The "[capital] Laurel County case" went to trial in 1992 is adversely affected by Rockcastle evidence.

prove the commission" of the capital case). Bowling,942 S.W.2d 293,at 301.**FN3**

[Capital] Laurel County case § 2254 habeas proceedings District Court raised 68 claims which included 3 claims about this Rockcastle case [Claims 3,22 & 59]. None of those 3 claims argues exoneration of Rockcastle case establish KRE 404(b) shall NOT authorize use of said evidence into the Laurel trial - which is what shall be established by habeas relief in Rockcastle case. The District Court held: ("The Rockcastle evidence was therefore 'highly probative' of Bowling's guilt in the Smith and Hensley murder.").**FN4**

Kentucky Attorney General's office [attorney for warden] in [capital] Laurel case in § 2254 proceedings District Court discussed inter alia ("Ground 3. Introduction of Rockcastle Crime") and details its' importance in getting Bowling found guilty.**FN5**

Three [capital] Laurel case jurors [alternates] heard prosecution's case.**FN6**

Footnote 3 - Laurel Circuit Court [Bowling's trial court on capital trial] relied on Kentucky Rule of Evidence (KRE) 404(b) in order to bring in 100% of the Rockcastle case [evidence] in order to get Bowling found guilty. **KRE 404(b)** states: ("Other crimes, wrongs,or acts. Evidence of other crimes,wrongs,or acts is not admissible to prove the character of a prson in order to show action in conformity therewith. It may,however, be admissible **(1)** If offered for some other purpose, such as proof of motive,opportunity,intent,or absence of mistake or accident; or **(2)** If so inextricably intertwined with other evidence essential to the case that seperation of the two (2) could not be accomplished without **serious adverse effect** on the offering party."). (Emphasis added). A successful challenge to Bowling's Rockcastle habeas claims would EXONERATE Bowling and establish KRE 404(b) would NOT authorize use of Rockcastle evidence in capital trial. Unlike when a charge or conviction is pending, when EXONERATED , shall happen [meaning no longer a charge exists or a conviction been cleared of any wrongdoing] then KRE 403 would NOT allow this evidence because its probative value would be substantially outweighed by the danger of undue prejudice.

Footnote 4 - See Bowling v. Haeberlin,No. 6:03-cv-00028-ART-HAI,2012 WL 448647 (E.D. Ky.,Sept. 28,2012)-(This capital Laurel case,R. 259,pp. 66-71).

Footnote 5 - See Bowling v. Haeberlin,No. 6:03-cv-00028-ART-HAI (Capital Laurel case § 2254 habeas proceedings. Kentucky Attorney General Assistant whom represented Warden Haeberlin, at R. 114, filed May 16,2011).

Footnote 6 - [Capital] Laurel case jurors' affidavits are in records of Rockcastle case at,Bowling v. White,No.6:12-189,at R.1, Attach. 5. In Laurel case,Bowling v. Com.,168 S.W.3d 2 (Ky. 2005).

Trial judge [Lewis B. Hopper] ask these 3 alternates to come to his chambers after they were dismissed. He wanted to know their opinion of the case & evidence which is as follows:

Juror: Ms. Linda Alice Booher, sworn affidavit dated 11/20/2001,stated,in part:

> ("It is my believe that if this case was tried in another county,Mr. Bowling would never been convicted based upon the evidence I saw; I thought the prosecutor Tom Handy was grasping at straws with the state's case; ...I told Judge Hopper that I would never convict this man based on what evidence they presented; ...I have learned that the defense could have put on ... evidence showing the testifying informant [Tim Chappell] lied to his own benefit; and evidence bringinto into question the reliability of a proseuction witness's testimony. I think that this information could have been crucial at Mr. Bowling's trial given the circumstantial nature of the state's case.").

Juror: Ms. Nola Mae Jones, sworn affidavit dated 11/20/2001,stated,in part:

> ("I recall the state's case being based on circumstantial evidence,with no eyewitnesses to the murders. I truly felt as if it could have gone either way; I think it would have been important to heard from an eyewitness [Randy Harris] to the first crime scene immediately or soon after the first crime occurred, who saw someone other than Ronnie Bowling fleeing the gas station; ...Since we heard from one inmate informant,Tim Chappell, who was the only person who claimed that he knew Ronnie was guilty, we should have heard from the other inmate [Gilbert Jones] who would have testified that Chappell had a patter of informing to benefit himself, and also that Chappell specifically intended to set Ronnie up to benefit himself in his legal situation; We should have known Tom Handy [prosecutor] intended to provide leniency to Tim Chappell in exchange for testifying; I think this information could have made a difference in how I thought about Ronnie Bowling's guilt or innocence; I think in a circumstantial case like this one, we [could] have gone either way, and this could have helped the jury in reaching a decision.").

Juror: Ms. Rita Clark, sworn affidavit dated 11/20/2001,stated,in part:

> ("I remember the testimony of Tim Chappell, an inmate witness who testified against Ronnie Bowling, I was surprised to learn that he received leniency in his own charges to testify in this case; I would have wanted to know that; It would have made a difference in how I weighed his testimony; Any information that could have provided to the jury regarding the possibility of other suspects in the case would have been important I would have wanted to hear from Randy Harris, who saw someone other than Mr. Bowling leaving the first crime scene shortly after Ronald Smith was murdered; I recall Judge Hopper asked us three alternates to come to his chambers after we were dismissed; I know he wanted to know our opinion of the case and evidence was, I remember I told him I was

glad I didn't have to make that decision because I didn't think I could; I had doubts about Mr. Bowling's guilt given the case as presented, and I know the standard of guilt was 'beyond a reasonable doubt.' This was troublesome for me; The fact that there was no eyewitnesses testimony cause me to have doubts about his guilt, which I still have to this day.").

Warden Randy White's lawyer [Mr. Jason B. Moore,Assistant Kentucky General] in this Rockcastle case while pending at Sixth Circuit wrote: ("Did the facts of Bowling's actions in Rockcastle County play a role in his Laurel convictions,**they certainly did**,...."),Bowling v. White,No. 15-6318 (6th Cir., June 8,2017), at Doc: 22, p. 28. (Emphasis added). **FN7**

Emphasis placed on Rockcastle case [evidence] in [capital] Laurel County trial distinquishes Bowling's case from Mr. Edward R. COSS,Jr. Unlike Mr. COSS who only shows a mere possibility his prior case affected his current sentence he is serving, in Bowling's case a reasonable probability exists due to the emphasis placed on this evidence that it "adversely affected" the capital trial. In Mr. COSS's the Court wrote: ("Whatever such a petitioner must show to be eligible for review, the challenged prior conviction must have adversely affected the sentence that is the subject of the habeas petition."),Lackawanna County Dist. Attorney v. Coss,532 U.S. 394,406 (2001),see Appendix J6.

Footnote 7 - Eminent Domain Proceedings, Jury Trial. Bowling establishes a successful challenge to his habeas claims [in Rockcastle case] would either (i) result in case against him being dismissed with prejudice or (ii) be remanded for a jury trial where a reasonable probability exists he shall be found NOT guilt. This would establish no longer would the [capital] Laurel County case jury be able to [reasonably] conclude that the act occurred and that Bowling was the actor. It would establish Bowling is cleared of any wrongdoing in the Rockcastle case - meaning that he did NOT have a gun and did NOT try to murder Ricky Smith. Being cleared of these issues in this Rockcastle case would foreclose Ricky Smith from testifying Ronnie Bowling had a gun and shot at him in the [capital] Laurel County trial - establishing KRE 404(b) would not authorize use of Ricky Smith's testimony in the capital trial about those things which were decided in Bowling's favor in this Rockcastle case. A new trial would have to be granted in the [capital] Laurel case because Ricky Smith testimony & inter alia about Rockcastle case [evidence] which shall be decided in Bowling's favor which were introduced in the capital trial "had a substantial and injurious effect or influence in determining the jury's verdict," Brecht v. Abrahamson,507 U.S. 619,623 (1993). Under Kentucky law it would establish [being cleared of any wrongdoing] that the prejudice far outweighed its' probative value in capital trial. Com. v. Morrison,661 S.W.2d 471,472 (Ky. 1983).

In Maleng it was Mr. Mark Edwin COOK, pro se in 1985,while in federal prison filed § 2254 petition in Federal District Court in Washington stating his 1958 conviction as "conviction under attack," for reasons including was used to enhance[FN8] 1978 sentences. District Court dismissed Mr. COOK's petition for lack of §2254(a) "in custody" jurisdiction on 1958 sentence. The 9th Circuit Court reversed holding Mr. COOK was "in custody" under 1958 sentence due to it had been used to enhance the 1978 sentence. The Court granted certiorari, affirming,held:

> ("Since we think respondent's habeas petition,construed with the deference to which pro se litigants are entitled,Haines v. Kerner,404 U.S. 519,92 S.Ct. 594,30 L.Ed.2d 652 (1972), can be read as asserting a challenge to the 1978 sentences,as enhanced by the allegedly invalid prior conviction,see United States v. Tucker,404 U.S. 443,92 S.Ct. 589,30 L.Ed.2d 592 (1972),we affirm the Court of Appeals' finding that respondent has satisfied the 'in custody' requirement for federal habeas jurisdiction.").

See Maleng v. Cook,490 U.S. 488,493-494 (1989),see Appendix L1-L3.

FACT is Bowling maintains he was not served out on Rockcastle sentence when he filed his pro se petition September 6,2012,Bowling v. White,No. 6:12-cv-00189, at R.1. On the other hand,if Bowling was no longer serving the 1996 Rockcastle sentence,gave the deference,to which pro se litigants are entitled, his habeas petition is asserting a challenge to the 1992 [capital] Laurel County case's [conviction & sentence].[FN9]

Footnote 8 - The word "enhance" by a leading law dictionary is defined as "Made greater; increased." See Black's Law Dictionary (7th Ed.). In another dictionary the word "enhance" is defined as "To increase or make greater, as in value, beauty, or reputation; augment." See The American Heritage Dictionary (2nd College Ed.). By the definition of "enhance" that is exactly what this Rockcastle case evidence did for the [capital] Laurel County prosecution's case/evidence ---it "enhanced" it. It unconstitutionally made greater the prosecution's case/ evidence and had a substantial and injurious effect or influence in determining the capital Laurel case jury's verdict.

Footnote 9 - Bowling has always [and respectfully does so now] maintain ACTUAL INNOCENCE of any wrongdoing in [capital] Laurel case & Rockcastle case. See Appendix N1-N17 (17-pg letter from Bowling to Mr. Moore).

The 3 jurors from [capital] Laurel case heard prosecution's case and would have found Bowling NOT guilty - establishing the capital case was far from being an "overwhelming" case against Bowling that in reality the prosecutor could barely make out a case against Bowling. Rockcastle case [evidence] "was calculated to inflame the minds of the jury against [Bowling] and to cause them to return a verdict of guilty in an otherwise doubtful case," Hurt v. Com.,278 S.W. 166,167 (Ky. 1925). "The error is of such proportion that the jury could have been prejudiced either in the consideration of ... [Bowling's] guilt or in the length of sentence or both," Neeley v. Com.,591 S.W.2d 366,368 (Ky. 1979).**FN10**

Bowling's pro se § 2254 petition asserts a challenge to the [capital] Laurel County case [even before a question about "in custody" was ever raised].**FN11** Then raised in other documents before District Court too.

FACT is Warden White's lawyers' & Ronnie Bowling have complete opposite positions. The argument on both sides comes down to 3 things: (1) Pretrial custody credit; (2) When does a concurrent sentence begin; (3) Had the Rockcastle sentence expired before §2254 petition was filed? The warden's lawyers'

Footnote 10 - [Capital] Laurel trial, prosecution's guilt phase closing argument was replete with reference after reference saying Bowling shot and attempted to murder Ricky Smith - - most of which the prosecutor used to answer his own questions of "where is the evidence of guilt on this man?" See Laurel TE 24,at 3571-73,3577,3579-80,3583-92. At the penalty phase, the trial court was asked to admonish the jury not to consider evidence of the Rockcastle County case shooting incident in deciding whether Bowling should live or die. See Laurel TE 24, at 3634-37. The judge then informed the jurors "that during this phase of the trial, you may consider the evidence that you considered,that you've deliberated and considered **all the evidence presented** during the guilt or innocence phase." See Laurel TE 24,at 3637 (emphasis added).

Footnote 11 - See Bowling v. White,6:12-cv-00189-ART-HAI (E.D. Ky.), at R. 1, at pp. 3-8. In the "Procedural History" section of Bowling's,pro se, habeas petition lists the Rockcastle case "procedural history" then capital Laurel case "procedural history" (pp. 5-8). Including this statement: ("If you have any doubt left of how important the Rockcastle County case was to the prosecutor's case that tried Ronnie Bowling in a death penalty trial in Laurel Circuit Court read the prosecutor-Tom Handy's own words found in the Laurel County Trial Transcript of Evidence (TE) 4,at 463. At no time did the prosecutor even

"convenient litigating position" is that: (1) Kentucky Department of Corrections has "recalculated" Bowling's Rockcastle sentence and he was already gave the pretiral custody credit, 1,378 days, in Laurel case, and now gave it to him also in Rockcastle case; (2) That KDOC has Bowling's Rockcastle sentence listed as beginning in 1989; And, (3) that the KDOC has listed Bowling as "served out" in the Rockcastle case. Bowling's position is: (1) He only got the 1,378 days pretrial custody credit in Laurel case for multiple reasons including because he went to trial first in that case; (2) If Rockcastle case is concurrent then under Kentucky law although judgment was not entered until 5/7/1996 it related back in time to when judgment was entered in Laurel case,12/09/1992, as its' start date; (3) That under KRS 532.120(1)(a) & (b) KDOC has "merged" the Rockcastle & Laurel sentences into one "aggregate" Death sentence and state, that the Rockcastle sentence,"Will be satisfied upon the completion of your Death sentence."

The majority decision by 6th Circuit gave "great weight," Bowling v. White,No. 15-6318 (6th Cir.,June 8,2017) to Warden's lawyers' litigating position to make its' §2254 "in custody" determination and affirm the U.S. District Court. Problem is zero (0) case records supports the warden's lawyers' position and [all] case records strongly proves Bowling's position. See Appendix M40-M78.

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seriously attempt to justify the introduction of this evidence or his prejudicial comments about this evidence beyond stating that exclusion of this evidence **'WOULD TOTALLY JUST TAKE AWAY THE COMMONWEALTH'S CASE AGAINST THIS MAN.'** Laurel TE 4, 463. Who is to second guess the very lead prosecutor that prosecuted the capital case against Ronnie. Let us look at what Tom Handy (Laurel County case prosecutor) said from another angle but is still true. That without the Rockcastle County case the Commonwealth has no case against Ronnie Bowling. Because the Rockcastle County case was relied on so heavily by the Laurel case prosecutor and is relied on now by the Kentucky Attorney General's Office and would be used against Ronnie after he wins a new trial [in capital Laurel case]. First Ronnie maintains his innocence and to clear his name and second because the Commonwealth of Kentucky will use this Rockcastle County case against him on re-trial Ronnie has no other choice but to fight this injustice."). Id.,pp. 5-8.

REASON(S) FOR GRANTING THIS PETITION

This case is far bigger than just this case. It affects every habeas petitioner in this nation. Compelling reasons do exist for this Court's discretionary jurisdiction. A case about 28 U.S.C. § 2254(a) "in custody." The driving force behind this petition is it is a case calls for certiorari to be GRANTED because it affects all habeas petitioners & prisoners everywhere.

I.] BOWLING'S § 2254 PETITION, GAVE DEFERENCE TO WHICH PRO SE LITIGANTS ARE ENTITLED, HAINES V. KERNER,404 U.S. 519 (1972), IS ASSERTING A CHALLENGE TO THE 1992 [CAPITAL] LAUREL COUNTY CASE [CONVICTION & SENTENCE], WHICH HE IS CURRENTLY SERVING, AS BEING ADVERSELY AND UNCONSTITUTIONALLY AFFECTED BY CONSTITUTIONALLY INVALID ROCKCASTLE COUNTY CASE [EVIDENCE] WHICH "HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT," BRECHT V. ABRAHAMSON,507 U.S. 619,623 (1993), TO SATISFY § 2254(a) "IN CUSTODY" REQUIREMENT, SEE, MALENG V. COOK,490 U.S. 488,493-494 (1989); LACKAWANNA COUNTY DIST. ATTORNEY V. COSS,532 U.S. 394 (2001); AND/OR, GARLOTTE V. FORDICE,515 U.S. 39 (1995).

This Court should order briefing on this question/reason because the Sixth Circuit Court of Appeals has decided an important question of federal law that has not been but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. See Bowling v. White,No. 15-6318 (6th Cir. June 8,2017). The important federal question is when a capital case's [conviction & sentence][FN12] has been adversely & unconstitutionally affected by constitutionally invalid Rockcastle case [evidence] rather than [conviction], where there is a reasonable probability based upon the emphasis of this evidence that it "had a substantial and injurious effect or influence in determining the jury's verdict," Brecht v. Abrahamson,507 U.S. 619,623 (1993), may this satisfy § 2254's "in custody"

Footnote 12 - See Bowling v. White,Nos. 12-6310 & 12-6404 (6th Cir.)-(This is Bowling's [capital] Laurel County case currently pending on appeal in federal habeas proceedings at Sixth Circuit Court of Appeals). The [capital] Laurel County case § 2254 habeas proceedings at U.S. District Court is Bowling v. Haeberlin,No. 6:03-cv-00089-ART-HAI. Bowling says "[conviction & sentence]" because in Kentucky sentencing jury's are allowed to consider [all] evidence that was presented in first phase of trial. Also,Lackawanna,532 U.S. 394,400,(c).

requirement?

In Maleng the Court held: ("Since we think respondent's habeas petition, construed with the deference to which pro se litigants are entitled,Haines v. Kerner,404 U.S. 519,92 S.Ct. 594,30 L.Ed.2d 653 (1972), can be read as asserting a challenge to the 1978 sentences, as enhanced by the allegedly invalid prior conviction, see United States v. Tucker,404 U.S. 443,92 S.Ct. 589,30 L.Ed.2d 592 (1972), we affirm the Court of Appeals' finding that respondent has satisfied the 'in custody' requirement for federal habeas jurisdiction."), Maleng v. Cook, 490 U.S. 488,493-494 (1989). Bowling's § 2254 petition,gave deference to which pro se litigants are entitled, can be read as asserting a challenge to the 1992 [capital] Laurel County case [conviction & sentence].**FN13**

On September 4,2012, Petitioner Ronnie Lee Bowling,pro se, mailed his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254,R. 1,to the U.S. District Court, in Eastern,Kentucky [Laurel County], filed September 6, 2012, in Bowling v. White,No. 6:12-cv-00189-ART-HAI, at R. 1.

Footnote 13 - See Bowling v. White,No. 6:12-cv-189,at R. 1,at pp. 5-8 [Bowling's pro se Petition for a Writ of Habeas Corpus that raises adverse affect this Rockcastle County case evidence had on the capital Laurel County case trial]. Also see, Id.,at R. 57,at pp. 28-86 [Bowling's pro se Reply/Traverse to the Warden's Answer to his habeas petition which is all about "in custody" under § 2254(a)]. Also see, Bowling v. White,No. 15-6318 (6th Cir.),at Document: 14 [This is Bowling's pro se "BRIEF FOR PETITIONER-APPELLANT" filed in this Rockcastle County case "in custody" appeal to Sixth Circuit Court, which is 30-pages long. At pp. 19-29 is asserting a challenge to the [capital] Laurel County case as being adversely affected by constitutionally invalid Rockcastle case evidence. Everything in this pro se brief to 6th Circuit Court is incorporated by reference now in support of GRANTING certiorari].

Bowling's Pro Se petition raised thirty (30) constitutional habeas claims which are fully exhausted in state courts. Precisely Habeas Claims 1-5 came from "direct appeal," see, Bowling v. Commonwealth,No. 96-SC-442 (Ky.,Oct. 15, 1998). Habeas Claims 6-27 came from post-conviction "RCr 11.42 proceedings,"see, Bowling v. Commonwealth,No. 03-CA-2339 (Ky. Ct. App.,Nov. 23,2005). And, Habeas Claims 28-30 came from post-conviction CR 60.02/RCr 10.02/RCr 10.06 "Jury Misconduct Proceedings," see, Bowling v. Commonwealth,No. 10-CA-490 (Ky. Ct. App.,Jan. 13,2012). These 30 Habeas Claims may be organized as follows:

1.) ALL [3] CLAIMS ABOUT SPEEDY TRIAL:
(Habeas Claims 1,2 & 22)

2.) ALL [19] CLAIMS ABOUT INEFFECTIVE-ASSISTANCE-OF-COUNSEL:
(Habeas Claims 6,7,8,9,10,11,13,14,15,16,18,19,20,21,22,23,24,26 & 27)

3.) ALL [5] CLAIMS ABOUT TRIAL COURT:
(Habeas Claims 3,4,5 & 17)

4.) ALL [5] CLAIMS ABOUT PROSECUTION VIOLATIONS:
[Habeas Claims 6,12,13,15 & 25)

5.) ALL [3] CLAIMS ABOUT JUROR MISCONDUCT:
(Habeas Claims 28,29 & 30)

Bowling challenges the [capital] Laurel County case [conviction and sentence] as being adversely and unconstitutionally affected by this constitutionally invalid Rockcastle case evidence. Had it not been for Constitutional errors described above a reasonable probability exists that the Rockcastle County case against Bowling would have been dismissed with prejudice and/or would have been found NOT guilty - which is legal exoneration - which establishes KRE 404(b) would NOT authorize use of Rockcastle case [evidence] in the [capital] Laurel County case trial - that given the emphasis placed on this evidence in the capital trial by prosecution [and in capital case's appeals/ opinions] a reasonable probability exists of "actual prejudice" that this evidence "had a substantial and injurious effect or influence in determining

the jury's verdict," Brecht v. Abrahamson,507 U.S. 619,623 (1993),quoting, Kotteakos v. United States,328 U.S. 750,776 (1946). A new trial would have to granted in the [capital] Laurel County case. This directly affects Bowling's present and future restraint.

The Court wrote: ("Whatever a petitioner must show to be eligible for review, the challenged conviction must have adversely affected the sentence that is the subject of the habeas petition."),see,Lackawanna County Dist. Attorney v. Coss,532 U.S. 394,406 (2001). Unlike Mr. Edward R. COSS,Jr.,who only showed a mere possibility that his current 1990 sentence was adversely affected by his 1986 conviction, in Bowling's case a reasonable probability exists that this Rockcastle case evidence adversely affected the capital Laurel County case [conviction & sentence] which is proven by the emphasis placed on this evidence by prosecution & inter alia. When Bowling strongly objected in the capital Laurel case to this evidence coming into that trial the prosecutor stated: (That the exclusion of this Rockcastle case evidence from the capital Laurel trial **"would totally take away the Commonwealth's case against this man [Bowling],"** see, Laurel County case Transcript of Evidence (TE) 4,at 463. Every single appeal in the capital case such as to Kentucky Supreme Court "direct appeal,"see, Bowling v. Commonwealth,942 S.W.2d 293,301 (Ky. (1997); capital case's federal habeas proceedings,see, Bowling v. Haeberlin,No. 6:03-cv-28,2012 WL 448647 (E.D. Ky.,Sept. 28,2012), at R. 259 [pp. 66-71],all discussed just how important this Rockcastle case evidence was in the capital Laurel case trial. Including, most recent when Rockcastle case "in custody" appeal was pending at 6th Circuit Court, Bowling v. White,No. 15-6318, when Assistant Kentucky Attorney General Mr. Jason B. Moore [whom represented & still represents Warden Randy White] wrote: ("Did the facts of Bowling's actions in Rockcastle County play a role in his Laurel County convictions; **they certainly did**,...."),see, R. 22,at p. 28 (emphasis added).

Speedy trial claims 1,2 & 22. Claim 22 is speedy trial/ineffective-assistance-of-counsel (IAC) claim. Habeas relief on any these speedy trial claims would require the case against Bowling be dismissed with prejudice - which is legal exoneration - establishes KRE 404(b) would NOT authorize use of this Rockcastle case evidence in the capital Laurel trial [because Bowling would have been exonerated in the Rockcastle case] - which establishes use of said evidence [such as Ricky Smith testimony, exhaustive detail about the Rockcastle case gas station and inter alia] in the [capital] Laurel County trial "had a substantial and injurious effect or influence in determining the jury's verdict," **FN14**,Brecht v. Abrahamson,507 U.S. 619,623 (1993). A new trial would have to be granted in the capital case which directly affects Bowling's present and future restraint. Habeas Claim 22 is only one (1) of the nineteen (19) IAC claims against Att. Linda Campbell, the other eighteen (18) IAC claims are against trial counsel [Tim Despotes]. Habeas Claim 2 [speedy trial under Barker v. Wingo,407 U.S. 514 (1972]. Habeas Claim 1 [speedy trial under 14th Amend.,to U.S. Cnst'n; KRS 500.110;Spivey v. Jackson,602 S.W.2d 158 (Ky. 1980) that the burden is NOT on Bowling to prove prejudice like under Barker but is on prosecution to prove "good cause" for violating speedy trial. Prosecution failed to prove "good cause" under Spivey it is mandatory a KRS 500.110 violation where no "good cause" has been shown the case against Bowling must be dismissed with prejudice]. Habeas Claim 22 [Kentucky Supreme Court remanded during "direct

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Footnote 14 - The word "enhance" by a leading law dictionary is defined as "Made greater; increased." See Black's Law Dictionary (7th Ed.). In another dictionary the word "enhance" is defined as "To increase or make greater, as in value, beauty, or reputation; augment." See The American Heritage Dictonary (2nd College Ed.). By the definition of "enhance" that is exactly what this Rockcastle case evidence did for the capital Laurel County prosecution's case/evidence - - - it "enhanced" it. It unconstitutionally made greater the prosecution's case/evidence and had a substantial and injurious effect or influence in determining the capital Laurel case jury's verdict.

appeal" and Att. Linda Campbell [whom Bowling had never met or spoke with] until he walked into the courtroom day of the hearing. A reasonable probability exists had it not been for Att. Campbell's ineffectiveness at this limited remand hearing the trial judge would have honored 14th Amend. to U.S. Const'n; KRS 500.110 and Spivey and dismissed the case/indictment against Bowling [with prejudice] because: (i) No "good cause" was shown why the original Rockcastle County Commonwealth Attorney and whole office withdrew from the case especially given the multiple demands for speedy trial Bowling made and right on the eve of trial; (ii) No "good cause" was shown by Special Prosecutor**FN15** for violating Bowling's speedy trial because (a.) Prosecutor's claims about his schedule is completely unsupported by any document/record; (b.) Court records proves the prosecutor could have tried Bowling's case within the speedy trial time limit; (c.) Prosecutor's own schedule he claimed during the remand hearing proves there were plenty of days open that could have been used to timely try the case; (d.) Prosecutor had another Assistant Commonwealth Attorney that was not tied up by schedule and could have easily filled in for Commonwealth Attorney.

The ineffective-assistance-of-counsel (IAC) Habeas Claims 6,7,8,9,10,11, 13,14,15,16,18,19,20,21,22,23,24,26 & 27. All IAC Habeas Claims [except for Claim 22] are against trial counsel [Tim Despotes]. In Bowling's case counsel's ineffectiveness denied the "assistance" part of 6th Amendment's "and to have the **assistance** of counsel for his defense." (emphasis added). Had it not been for the Constitutional errors of counsel's ineffectiveness a reasonable probability exists the case against Bowling would have been dismissed with

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Footnote 15 - "Special Prosecutor" was Mr. Tom Handy. Mr. Handy was the Laurel County Commonwealth Attorney that tried Bowling in the [capital] Laurel County case in 1992 where 100% of this Rockcastle County case evidence was introduced in order to get Bowling convicted. Mr. Handy knew this Rockcastle County case because of that he did not need extra time to prepare for trial like a new prosecutor that did not know the case. Also, by the time of the 1996 Rockcastle case trial. The capital case had been fully transcribed and was available.

prejudice and/or would have been found NOT guilty. Trial counsel refused to even shake Bowling's hand. Not one time did he ever visit Bowling to discuss the case. He told Bowling he was recording their calls and going to play them to the prosecutor. Zero trust with no attorney-client confidentiality or relationship. A real conflict of interest. He knew Bowling had been convicted in the [capital] Laurel County case and held that against him.**FN16**

With all due respect to trial court there are trial court errors shown at Habeas Claims 3,4,5 & 17. Habeas Claim3 [double jeopardy violation is argued because 100% of this Rockcastle case evidence was used already one time to get Bowling found guilty in capital Laurel case]. Habeas Claim 4 [Right to confront and cross-examine Trooper Dallas Belile. Belile refused to come to be a witness at this Rockcastle trial so prosecutor used his testimony from the capital Laurel trial. Problem is Bowling's capital trial counsel was ineffective in how he handled that cross-examination. Also exculpatory evidence had been located since that capital trial that Belile needed to be questioned on. Belile testified he was first person to where the alleged roadside gun. Ricky Smith, James Smith & Smith's neighbor were there first - proves Belile was not first person to the alleged roadside gun]. Habeas Claim 5 [Change of Venue]. Habeas Claim 17 [Bowling filed a pro se lengthy motion to get trial counsel Tim Despotes off his case, appoint new counsel, or let him proceed as his own counsel under Faretta v. California,422 U.S. 806 (1975). Trial court never conducted a sua sponte inquiry, never conducted a hearing and denied Bowling's right to represent himself]. Because trial court failed to appoint Bowling another attorney to

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Footnote 16 - Actual Rockcastle case juror,Mrs. Martha (Begley) Damrell,sworn affidavit gave February 15,2000, states,in part: ("I didn't think Mr. Bowling's defense attorney did a very good job defending him. He was not zealously defending him. He acted as if he just wanted to get it over with."). See Bowling v. White,No. 6:12-cv-189,at R. 57 [Bowling's Reply/Traverse to Warden's response to habeas],at Attachs. Nos. 3,4,5,6 & 7 [This is Attach. 3];Rockcastle TR2 V,at 824-836; 1106-1111.

replace Att. Tim Despotes this denied Bowling "assistance" of counsel for his defense. The Sixth Amendment guarantees "to have the **assistance** of counsel for his defense." (emphasis added). There are 18 of 30 Habeas Claims in Bowling's pro se petition about Constitutional errors regarding trial counsel [Tim Despotes] ineffectiveness. A reasonable probability exists had it not been for these Constitutional errors the case against Bowling would have been dismissed with prejudice and/or he would have been found NOT guilty. The trial court also denied Bowling's alternate choice that is to take Despotes off his case, appoint another attorney, or let Bowling represent himself. Denied "assistance" of counsel to put forth Bowling's best defense to this charge, and/or, denied the right to self-representation either way denied this fundamental right under 6th & 14th Amendments,"rising to the level of jurisdictional defect, which therefore warrants special treatment among constitutional violations;"Lackawanna County Dist. Attorney v. Coss,532 U.S. 394,400, at (c) (2001).

Under Brady,Giglio & Napue the prosection violations shown in Bowling's Habeas Claims 6,12,13,15 & 25, had it not been for these Consitutional errors a reasonable probability exists the case against Bowling would have been dismissed with prejudice and/or would have been found NOT guilty.**FN17** In Habeas Claim 6 [Prosecution failed to turn over to defense evidence that would have totally discredited prosecution's star witness Ricky Smith and evidence which would have helped prove Bowling's defense].**FN18.** In Habeas Claims 12 [Prosecutor

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Footnote 17 - See Brady v. Maryland,373 U.S. 83,87 (1963)-("The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecutor." (emphasis added); Strickler v. Greene,527 U.S. 263 (1999); Kyles v. Whitley,514 U.S. 419 (1995). Prosecutor's duty includes disclosing both substantive and impeachment evidence. U.S. v. Bagley,473 U.S. 667 (1985)/ Giglio v. United States,405 U.S. 150 (1970)/ Napue v. Illinois,360 U.S. 264 (1959).

misrepresented to the jury that only one pistol existed].**FN19** In Habeas Claim 13 [Due to Brady violation jury never learned Smith was a convicted criminal & owned identical twin pistol as the alleged roadside pistol].**FN20** In Habeas Claim 15 [Had Brady violation not happened it would have futher proven the the collected evidence at Sunoco station and by roadside its' integrity was compromised to the point it would have had to been suppressed and the case against Bowling would have had to been dismissed with prejudice].**FN21** In Habeas Claim 25 (Brady violation: Prosecutor withheld "mug shots" (mutliple colored photographs) of Bowling on day of his arrest, took at Kentucky State Police Post which would have: (i) Shown a young 20-year-old kid with blood all over him (his blood from being shot in head and hand) and helped explain how a young person could believe he is dying and freak out which explains why in a panicked freaked out state of mind he went home (instead of stop for police) as not motivated by guilt; (ii) It exonerates Bowling by showing all the blood on him includes both hands that it is impossible to (as alleged) to tossed a pistol out his car without getting at least one drop of blood on it].

Footnote 18 - Ricky Smith lied. Prosecution withheld four (4) substantially factually different statements: (i) Day of Bowling's arrest,2/25/89, first story Smith said NOT one word accusing Bowling of having a gun; (ii) Second story,on 2/26/89, Smith said Bowling had a gun but he did not really see it; (iii) Third story, Smith gave at Bowling's 1992 [capital] Laurel case trial saying he saw about half the gun. Defense counsel ask Smith: Did you see the handles? Smith said: No. Defense counsel ask Smith: Did you see the barrel? Smith said: No. Smith added: That all .38 pistols look a like to him. And, (iv) in this 1996 Rockcastle case trial Smith's fourth story is said: He saw the pistol and that one looks like it.

Footnote 19 - In [capital] Laurel trial Bowling's dad gave his .38 pistol into evidence and testified the pistol on the kitchen counter belonged to him. Yet at this Rockcastle trial the prosecutor (same prosecutor from Laurel trial) mislead this jury to believing only one pistol existed. That mislead the jury.

Footnote 20 - Brady violations: Failed to turn over Commonwealth v. Ricky K. Smith,No. 93-M-00347,Rockcastle District Court [convicted of carrying concealed deadly weapon, possession of marijuan, and drug paraphernalia). The weapon is identical twin to Smith's roadside pistol. Both pistols .38 caliber, both Smith & Wesson, both revolvers, both manufactured in 1983, and get this [both] were identically blue finished (which can be traced to identical).

Footnote 21 - Ricky Smith, James Smith, Det. Harold, including totally unsecured

Lastly are Habeas Claims 28,29 & 30 [Juror Misconduct]. Jurors failed to answer honestly material questions on voir dire. An honest answer would have kept them from being on this jury. These jurors made it onto the jury and like rotten apples in a barrel infected the rest of the jurors with their material extrajudicial information & prejudicial comments denying right to a fair and impartial jury. A new trial would have to be granted. A reasonable probability exists upon re-trial Bowling shall be found NOT guilty and/or case against him dismissed with prejudice because the prosecution's case has been totally-discredited and fully-rebutted. Lackawanna County,532 U.S. 394,400,at (c)..

Footnote 21 (continued) - alleged crime scene & evidence. Ricky Smith over reacted (due to recent events such as Marvin Hensley & Ronald Smith allegedly being killed at gas stations). Smith armed up & on look out for any suspcious person or behavior. In walks Bowling (20-year-old kid) whom had never met. Bowling's questions & behavior [although actually innocent behavior for a kid with organic brain damage] was misunderstood by Smith. Bowling turned to leave. It is February (middle of winter) and cold. Bowling stopped a second to zip up his jacket at the door. Smith must have thought Bowling was pulling a gun and just begun firing. Hitting Bowling one time in head. As Smith fired he was jumping into a little small room where he continued to blindly fire & shot Bowling a second time (in the hand). Bowling runs out. Starts his car up and backs it out. When out comes Smith firing more shots. This was at 6:00 am-EST. Smith saw Bowling's blood,flesh,scalp on floor,walls & ceiling, realizing he has probably just killed or seriously wounded an unarmed person, sets the station up to make it appear shots were exchanged. Drives his pistol about 10-miles down the road [and places] it onto the roadside. This explains why records shows Smith did not call in and report this alleged incident until 6:30 am-EST. See, Rockcastle TE2,at 228. If that was not enough time Smith had plenty because this alleged crime scene was never secured by police. Smith lead police straight to his roadside pistol with serial # **C 8 7 9 5 6**. Police procedure about securing alleged crime scene & evidence collection was not followed. None of this was turned over by prosecution. Prosecution failed to turn over exculpatory evidence via police reports & lab reports. See, Bowling v. White,No. 6:12-cv-189,at R. 1 [Bowling's Pro Se habeas petition],at Attachments "III" and "IV" are the reports that would have proven Bowling's defense and a reasonable probability exists would have got the case against Bowling dismissed with prejudice and/or found NOT guilty. Proves the first alleged roadside gun had serial # **1 0 3 7 5 6** (Testimony was gave at Bowling's trial that accounts for this pistol). Kentucky State Police Staff Sgt. Milton Baker in black inkpen signed his full name that serial # 103756 is the gun he was gave and stored at police post. This totally contradicts David Biggerstaff. That gun was replaced with Ricky Smith's gun #C87956. The other reports shows not one single scratch mark was found on gun #C87956. It is physically impossible to be going speeds they alleged Bowling was and throw a gun onto roadside and it not get at least one scratch. It is more consistent with being [placed] on roadside by Smith. Smith has the identical twin .38 pistol to the roadside gun.

II.] A PRO SE LITIGANT, GAVE DEFERENCE UNDER HAINES V. KERNER,404 U.S. 519 (1972), FOR NOT FILING SOONER WHEN TRIAL COURT FOR TEN (10) YEARS [NO MATTER HOW MANY REQUESTS WERE MADE FOR IT TO RULE] REFUSED WITHOUT JUSTIFICATION TO RULE ON HIS CONSTITUTIONAL CLAIMS, TO BE HELD "IN CUSTODY" UNDER § 2254(a), AS ASSERTING A CHALLENGE TO THE 1992 [CAPITAL] LAUREL COUNTY CASE [CONVICTION & SENTENCE], HE IS CURRENTLY SERVING, AS BEING ADVERSELY & UNCONSTITUTIONALLY AFFECTED BY CONSTITUTIONALLY INVALID ROCKCASTLE CASE [EVIDENCE] WHICH "HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT," BRECHT V. ABRAHAMSON,507 U.S. 619,623 (1993), SATISY § 2254(a) "IN CUSTODY" REQUIREMENT, SEE, MALENG V. COOK,490 U.S. 488,493-494 (1989); LACKAWANNA COUNTY DIST. ATTORNEY V. COSS,532 U.S. 394,405 (2001); AND/OR, GARLOTTE V. FORDICE,515 U.S. 39 (1995).

This Court should order briefing on this question/reason because Sixth Circuit Court of Appeals has entered a decision that conflicts with decisions of other United States court of appeals. There is an important question of federal law that has not been but should be, settled by this Court. See Bowling v. White,No. 15-6318 (6th Cir. June 8,2017), in Slip-Op. 13-15,also see, Appendix at A13 - A15. The important federal question of federal law that has not been but should be,settled by this Court is: May a pro se litigant be gave deference under Haines for not filing his petition sooner when the trial court [records shows multiple motions and documents were filed asking it to rule for years] refused without justification to rule on Bowling's constitutional claims [Habeas Claims 28,29 & 30] be held "in custody" under § 2254(a), as asserting a challenge to the [capital] Laurel County case as adversely affected by this Rockcastle County [evidence]? Is it expecting too much of a pro se litigant to filed sooner his habeas petition [while the appeal in state court tolled the 12-months habeas clock, as is conceded by opposing counsel]? Bowling remained diligent and within days as soon as state court decided the appeal he filed his pro se § 2254 petition.FN22

Footnote 22 - See Bowling v. White,No. 15-6318,at Slip Op. 14,also, Appendix A14. Two cases 6th Circuit Court conflicts with: Brattain v. Cockrell,281 F.3d 1278,at *2 (5th Cir. Nov. 27,2001); Ward v. Wolfenbarger,323 F. Supp. 2d 818,827-28 (E.D. Mich. 2004).

The Court wrote: ("It is not always the case,however, that a defendant can be faulted for failing to obtain timely review of a constitutional claim. For example, a state court may, without justification, refuse to rule on a constitutional claim that has been properly presented to it," Lackawanna County Dist. Attorney v. Coss,532 U.S. 394,405 (2001),see, Appendix at J6. This is the case now. The constitutional claims were properly presented to state courts and tolled the 1-year limitation period. Bowling filed timely within the 1-year his habeas petition. Unlike Mr. Edward R. COSS,Jr.'s case where "Neither petitioners nor respondent is able to explain this lapse," id. *398,see,Appendix J3, in Bowling's case records prove that he filed multiple motions and documents over course of several years pleading with the trial court to rule on his case. Records show [the opposing counsel at that time] Kentucky Attorney General's office representing Commonwealth also tried to get trial court to rule. Unlike Mr. COSS who failed to show that he ever tried to get the trial court to rule in Bowling's case records proves multiple motions/documents were filed over course of several years trying to get trial court to rule. See Bowling v. Commonwealth,No. 2010-CA-490 (Ky. Ct. App.,Jan. 13,2012) (Juror misconduct), also see,Appendix at 01 - 020 ["BOWLING'S 'JUROR MISCONDUCT PROCEEDINGS' NARRATIVE SUMMARY" (pertinent records)]. FN23

Footnote 23 - Bowling v. White,No. 15-6318 (6th Cir. June 8,2017), majority decision [Circuit Judges: Clay & Gibbons], opinion wrote by Gibbons, held: ("Moreover,because Bowling currently has a seperate § 2254 petition pending before this court in which he explicitly challenges constitutional defects in his Laurel County conviction,interpreting his petition in this manner is duplicative and would require dismissal under 28 U.S.C. § 2244."). The Sixth Circuit Court has misunderstood 28 U.S.C. § 2244. This would not be duplicative because it does not raise the same "constitutional defects" in the [capital] Laurel County case. See Bowling v. Haeberlin,U.S. District Court No. 6:03-cv-00028-ART-HAI [(capital) Laurel County federal habeas], at R.1. It raised 68 claims. None of those claims except three (3) [Claims 3,22 & 59] mention the Rockcastle case. None of those 3 claims argues exoneration of Rockcastle case establishes KRE 404(b) shall NOT authorize use of said evidence into the Laurel trial - which is what shall be established by habeas relief in Rockcastle case. This proves it is NOT duplicative to any claim in the Laurel habeas petition.

III.] **FACTUAL PREDICATE FOR HABEAS CLAIMS 6,7,8,9,10,11,12,14,15,16,17, 20,21,24,25 & 27, COULD NOT HAVE BEEN DISCOVERED PREVIOUSLY THROUGH EXERCISE OF DUE DILIGENCE; FACTS UNDERLYING THESE CLAIMS, IF PROVEN AND VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE, WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT, BUT FOR CONSTITUTIONAL ERRORS, NO REASONABLE FACTFINDER WOULD HAVE FOUND BOWLING GUILTY OR THE CASE AGAINST HIM DISMISSED WITH PREJUDICE; C L E A R I N G BOWLING OF ANY WRONGDOING IN ROCKCASTLE COUNTY CASE - ESTABLISHING KRE 404(b) SHALL NOT AUTHORIZE USE OF ROCKCASTLE CASE [EVIDENCE] BEING INTRODUCED BY PROSECUTOR IN THE [CAPITAL] LAUREL COUNTY TRIAL - ESTABLISHING USE OF SAID EVIDENCE "HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT," BRECHT V. ABRAHAMSON,507 U.S. 619,623 (1993), SATISFYING § 2254(a) "IN CUSTODY" REQUIREMENT, SEE, MALENG V. COOK,490 U.S. 488,493-494 (1989); LACKAWANNA COUNTY DIST. ATTORNEY V. COSS,532 U.S. 394,405 (2001), AND/OR, GARLOTTE V. FORDICE,515 U.S. 39 (1995) - ESTABLISHING A NEW TRIAL WOULD HAVE TO BE GRANTED IN [CAPITAL] LAUREL COUNTY CASE WHICH DIRECTLY AFFECTS BOWLING'S PRESENT AND FUTURE RESTAINT.**

GRANT certiorari, order briefing, Sixth Circuit Court departed from accepted & usual course of judicial proceedings. It allowed Bowling's Pro Se brief, and did not acknowledge claims in it[not raised in attorney's brief.] The [essence] of this claim has been fairly presented to District Court**FN24** and in Sixth Circuit Court**FN25**. Under the Court's holding in Lackawanna County Dist. Court v. Coss,532 U.S. 394,405 (2001), Bowling's case fits the exception to § 2254(a) "in custody" as asserting a challenge to [capital] Laurel County case [conviction & sentence] as being adversely & unconstitutionally affected by this constitutionally invalid Rockcastle County case [evidence].**FN26**

Footnote 24 - See Bowling v. White,No. 6:12-cv-189, at R. 52 ["(Bowling's) Motion For Funds Under 18 U.S.C. § 3599 For A Neuropsychological Evaulation And Brain Scan"], filed Pro Se July 31,2013, U.S. Dist. Court, see, Appendix at M97-M128. Also see, Appendix at M95 ["Notice Of Intent To Introduce Evidence Of Mental Illness Or Insanity At Time Of Offenses"], which was by reference incorporated in R. 52, at p. 29, see, Appendix at M125.

Footnote 25 - See Bowling v. White,No. 15-6318,at Doc: 14,at pp. 19-25 [Bowling's Pro Se brief at 6th Circuit Court raises this claim but was not adjudicated. Bowling attached to his Pro Se 6th Cir brief a complete copy of R. 52].

Footnote 26 - See Appendix at P1-P42 ["16 Habeas Claims 'Factual Predicate' Narrative Summary"]. A lifetime of traumatic brain injuries caused organic brain damage which caused mental illness and/or insanity at time of offenses which had a direct effect on Bowling's behavior, thinking & functioning: (1) Before & leading up to Rockcastle case gas station; (2) While at Rockcastle gas station; (3) To leave Rockcastle gas station & not stop for police. All of this is totally consistent with ACTUAL INNOCENCE. Without an alternate explanation the jury surely concluded Bowling's behavior must of been motivated by guilt.

Is a defendant limited to using defenses others have used or is he or she free to choose under Federal Constitution the best defense for the case? Bowling's best defense-truth shown by ACTUAL INNOCENCE which includes Neuropsychologist expert testimony to explain Bowling's behavior (1) Before and leading up to coming to Rockcastle gas station; (2) While at the Rockcastle gas station; And, (3) to leave Rockcastle gas station and not stop for police until he got home.

Bowling's original attorney [R. Cletus Maricle] he understood this and filed,"Notice of Intent To Introduce Evidence of Mental Illness or Insanity at the Time of Offense," December 21,1989. At that time, Att. Maricle became a judge, and had to withdraw from Bowling's case. Bowling's other attorneys were ineffective for not following through with this.

Bowling's ACTUAL INNOCENCE defense is not limited to a part but includes **(i)** Alibi defense in [capital] Laurel case which strongly proved where he was at during the time of those alleged crimes; **(ii)** Jury never heard from eyewitness Randy Harris. Police records shows Harris reported very next day after Ronald Smith was alleged killed in Laurel case that Harris a resident of Laurel County. He had been out-of-state just getting back. Decided to stop at that gas station to get pack of cigarettes. Pulled in to the gas station. Realized he had half pack of cigarettes. Decided to just go on home. As he was pulling out a man comes "running" out of the gas station, jumps into a car and pulls out. There is a traffic light right out in front of the gas station. Both of them in cars side-by-side. Harris knew the exact time because his car had a clock in the dashboard. Harris testified at Bowling's RCr 11.42 [Laurel case] proceedings that person he saw was N O T Ronnie Bowling. This is the exact time Ronald Smith was allegedly killed;**(iii)** In these trials prosecution relied and emphasized Bowling's behavior leading up to and coming to Rockcastle gas station, while at the Rockcastle gas station, to leave the Rockcastle gas station

and not stop for police. Without an alternate explanation the jury surely found that Bowling must be guilty. A Neuropsychologist would have provided that explanation. This was a critical area to Bowling's ACTUAL INNOCENCE defense that his lawyers prejudiced him on with the jury; **(iv)** Also the jury never that prosecution's witness [a lying jailhouse informant] named Tim Chappell and his lawyer [Barbara Carnes] both perjured themselves in these trials. They lied. They told the jury that Chappell never got any favoritism or leniency for his testimony against Bowling. That was beyond any doubt proven to be a lie. Even the U.S. District Judge in capital Laurel case's federal habeas opinion called Chappell a "liar"; **(v)** The jury never learned Bowling's ex-wife has came forward with proof she was coerced into testifying for the prosecution; And the list goes on and on. Bowling almost won these trials as messed up as they were to start with. Three [capital] Laurel jurors, see pages 5-7 (of this document) all would have found Bowling NOT guilty said things like "I would never convict [Bowling] based on what evidence they presented." There is no case left against Bowling that has not been totally-discredit or totally-rebutted.

In the [capital] trial Bowling tried to get this Rockcastle case evidence excluded. The proseuctor stated: (That the exclusion of this Rockcastle case evidence **"would totally take away the Commonwealth's case against this man [Bowling]."** See Laurel case TE 4,at 463. Assistant Ky Ag Mr. Jason B. Moore while this case was at 6th Circuit stated: ("Did the facts of Bowling's actions in Rockcastle County play a role in his Laurel County convictions,**they certainly did**,...."),see,Bowling v. White,No. 15-6318 (6th Cir.,June 8,2017),at Doc: 22.

Kentucky courts have long recognized that "'[t]he flight of a person after the commission of a crime and before his arrest is,under the prevailing rule,a circumstance to be considered with the other circumstances of the case in determining his guilt or innocence.'" Hamblin v. Com.,500 S.W.2d 73,74 (Ky.

(1973), Thus, any knowledgeable practioner of criminal defense law would have realized prior to Bowling's trial that the circumstances of him leaving the Rockcastle gas station and not stopping for police would be evidence that the prosecution would present.

In Kentucky, an accused's "'flight...is some evidence of guilt,' but with his right to explain the reason for fleeing," Id.,citing Hord v. Com.,227 Ky. 439,13 S.W.2d 244 (Ky. 1928). Hamblin,supra,has remained controlling law in this jurisdiction. See Chumbler v. Com.,905 S.W.2d 488,496 (Ky. 1995). This was the status of the law at the time of Bowling's trial,it was imperative that his defense counsel investigate Bowling's medical background of a lifetime of traumatic brain injuries. A reasonable probability exists of organic brain damage and a Neuropsychologisit would have provided the explanation for three critical areas: (A) Bowling's behavior leading up to and coming to Rockcastle gas station; (B) While at the Rockcastle gas station; (C) To leave the Rockcastle gas station and not stop for police, as NOT motivated by guilt but is ACTUALLY INNOCENT behavior for a 20-year-old kid with organic brain damage.

In [capital] Laurel case, U.S. District Court,federal habeas proceedings, at Bowling v. Haeberlin,No. 6:03-cv-00028-ART-HAI,R. 259,at pp. 117-143,discussed "Bowling's alleged brain damage (claims 53,54,55,57,59,60,61)." District Court further stated: ("But the Court nevertheless assumes that there was a reasonable probability that a neuropsychologist could have testified that Bowling had some form of 'organic brain damage.' See R. 1 at 270 [citing 3 Supp. T.R. for Rule 11.42 Appeals 345-46 (affidavit of Dr. Michael Gelbort))."). Id.,at p. 128. Please keep in mind when reading pp. 117-143, that the only medical history those witnesses were asked about was Bowling's car accident at age 16. So much more than that. See Appendix P1-P42 ("16 HABEAS CLAIMS 'FACTUAL PREDICATE' NARRATIVE SUMMARY").

Without an alternate explanation, the jury surely concluded Bowling's

flight from police, leaving Rockcastle gas station, while at gas station his questions,looking around and actions, his coming to a gas station to look for a job, was motivated by his guilt - to shoot at Ricky Smith. The jury would surely conluded that if Bowling had shot at Smith, he must have shot and killed the other two gas station attendants, Ronald Smith and Marvin Hensley, as well. Trial counsel should have realized that an explanation was needed for this apparently uncontrolled, even seemingly irrationable behavior. Long ago, the Court held "the evasion of or flight from justice[,] ... like any other piece of presumptive evidence,...is equally absurd and dangerous to invest with infallibility." Hickory v. United States,160 U.S. 408,419-420 (1896). In this vein,federal jury instructions on flight often "remind [] jurors that flight may be consistent with innocence,"United States v. Otero-Mendez,273 F.3d 46,54 n.3 (1st Cir. 2001).

Prosecution witness Ricky Smith testified while Bowling was at the station that he **"could see something was f o r c i n g him [Bowling] to do something he was t r y i n g t o h o l d b a c k from doing."** Laurel TE 19,2774. Surely the jury without an alternate explanation concluded Bowling was motivated by guilt. Just as Ricky Smith a man already on the edge due to recent events of Ronald Smith and Marvin Hensley was allegedly killed/robbed. Bowling's mis-understood behavior caused Smith already on the edge to go further on the edge. To right at the critical moment when Bowling was leaving. Remember it is Feburary in Eastern,Kentucky, in middle of winter. Bowling stopped at door a second to zip up his jacket. Smith misunderstood this and wrongly believed Bowling was pulling a gun out and Smith just begun blindly shooting at Bowling. Shot Bowling in the head and in the hand. As Smith shot he was running, jumping into a little small joining room where he continued fired at Bowling. Bowling ran out to his car. Started it up. Back it out. As he was backing out Smith ran out and continued shooting. Bowling drove away as fast as he could. Bowling did NOT have a gun. Smith soon realized he has probably just killed or seriously

wounded an unarmed kid. Smith who has a criminal record and has shot other people not wanting to be prosecuted himself. Takes his extra .38 caliber pistol and fires extra shots into the station. Drives down road about 10 miles [places] it on roadside. This explains why this incident alleged to happened at 6:00 a.m. but Smith did not call it in until around or after 6:30 a.m. This alleged crime scene was never secured. The alleged evidence its' integrity is compromised because police did not follow proper evidence collection and crime scene protocal. Ricky Smith himself told them where to find his roadside gun.

A police report from Kentucky State Police Lab shows the roadside gun never had not one single scratch on it. See the Attachments to Bowling's Pro Se Petition for a Writ of Habeas Corpus filed in Bowling v. White,6:12-cv-00189, at R. 1. It is physically impossible to have been going at speeds they alleged Bowling was [over 100 mph] and throw a metal pistol onto the roadside and it not get at least one scratch. That thing would bounce,slide,roll,scoot and get scratched up. This lab result is consistent that Smith [placed] the gun onto the roadside. Because it being [placed] rather than thrown from a 100 mph car is why it never had a scratch on it.

A reasonable probability with this factual predicate the case against Bowling would have been dismissed with prejudice and/or that he would have been found NOT guilty. This is exoneration of this Rockcastle case charge which establishes KRE 404(b) would NOT authorize use of said evidence in the capital Laurel trial. That use of said evidence "had a substantial and injurious effect or influence in determining the jury's verdict," Brecht v. Abrahamson,507 U.S. 619,623 (1993). A new trial would have to be granted in [capital] Laurel County case. This directly affects Bowling's present and future restraint.

IV.] FOURTEENTH AMENDMENT'S DUE PROCESS & EQUAL PROTECTION HAVE BEEN VIOLATED BY MAJORITY DECISION, BOWLING V. WHITE,NO. 15-6318 (6TH CIR.,JUNE 8,2017), IN ITS' § 2254(a) "IN CUSTODY" DETERMINATION & DECISION TO AFFIRM U.S. DISTRICT COURT, WHICH UNCONSTITUTIONALLY SINGLED BOWLING OUT FOR DISPARATE TREATMENT & SET A BAD STANDARD FOR ALL PRISONERS, STATES & HABEAS PETITIONERS, BECAUSE IT CONTRAVENES SETTLED PRECEDENT IN TWO AREAS: FIRST, BY GIVING "GREAT WEIGHT," ID. SLIP OP. 8, TO WARDEN'S "CONVENIENT LITIGATING POSITION" [WHICH HAS ZERO (0) SUPPORT FROM ANY CASE RECORD, CLAIMS: (A.) KDOC "RECACLULATED" ROCKCASTLE SENTENCE AWARDING IT THE 1,378 PRETRIAL CREDIT DAYS; (B.) KDOC HAS LISTED ROCKCASTLE SENTENCE START DATE AS 1989; (C.) KDOC HAS ROCKCASTLE SENTENCE LISTED "SERVED OUT"] & SECOND, FUNDAMENTALLY MISAPPREHENDS KENTUCKY LAW.

GRANT certiorari, order briefing, 6th Circuit Court [majority], Bowling v. White,No. 16-6318 (6th Cir.,June 8,2017), has so far departed from the usual course of judicial proceedings. It threatens to erode federalism and do harm to prisoners, states and habeas petitioners across the nation. It has singled Bowling out for disparate treatment allowing the majority's opinion to stand will open the door to individuals and agencies to take positions for the sake of litigation alone. It greatly conflicts with this Court's decision(s)FN27 & every U.S. Court of Appeals (included 6th Circuit Court until Bowling's case) FN28 in 2 areas of settled predent: (1) CONVENIENT LITIGATING POSITION & (2) MUST GIVE EFFECT TO BOTH PROVISION.

Footnote 27 - (1) CONVENIENT LITIGATING POSITION: See Bowen v. Georgetown Univ. Hosp.,488 U.S. 204,213 (1988)-("(d)eference to what appears to be nothing more than an agency's convenient litigating position (is) entirely inappropriate."); Christopher v. Smithkline Beecham Corp.,567 U.S. 142,155 (2012). * * * **(2) MUST GIVE EFFECT TO BOTH PROVISIONS:** See Nat'l Labor Relations Bd. v. Jones & Laughlin Steel Corp.,301 U.S. 1,30 (1992)-("(S)o long as there is 'no positive repugnancy'" between the two provision,"court(s) **must** give effect to both") (emphasis added); Pennhurst State Sch. & Hosp. v. Halderman,465 U.S. 89,106 (1984); United States v. Thirty-Seven (37) Photographs,402 U.S. 363,369 (1971).

Footnote 28 - (1) CONVENIENT LITIGATING POSITION: See Franklin Fed. Sav. Bank v. Dir.,Office of Thrift Supervision,927 F.2d 1332,1337 (6th Cir. 1991)-("(W)e do not defer to positions taken by the agency in the course of litigation,as those positions are generally dictated by agency lawyers, not by those with the specialized expertise upon which courts legitimately rely"); United States v. Cinemark USA,Inc.,348 F.3d 569,578 (6th Cir. 2003); Also see Mass v. Sebelius, 638 F.3d 24,30 (1st Cir. 2011); Union Carbide Corp. & Subsidiaries v. Comm'r Internal Revenue,697 F.3d 104,109 (2d Cir. 2012); Egan v. Del. River Port Auth., 851 F.3d 263,281,n.5 (3d Cir. 2017); Ohio Valley Entl. Coal v. Aracoma Coal Co.,556 F.3d 177,213 (4th Cir. 2009); Castellanos-Contreras v. Decatur Hotels,

Ky's LEGISLATIVE & JUDICIAL branches gave complete authority to KDOC to calculate its' prisoners' pretrial custody credit & make sentence calculations of when a sentence is served or NOT. In 2011, KRS 532.120(3),was amended, replacing, "by the court imposing the sentence" with "by the Department of Corrections." In Winstead v. Com.,327 S.W.3d 479,483,489-491 (Ky. 2010),see Appendix I1-I10: ("The Executivie Branch,in the form of the Department of the Department of Corrections--not the judicial branch--is ultimately responsible for determining when prisoners in its custody are eligible for release.").Id.,*483.

K.R.S. 532.120(9)**FN29** gives Ky prisoners "administrative remedies," to file to learn Ky DOC's exact position under KDOC Policy 17.4 ["sentence calculations"],see Appendix M77-M78 & KDOC Policy 28-01-08(II)(A)(2) & (6) ["calculation of custody time credit"],see Appendix M70-M75. Bowling exercised

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LLC,622 F.3d 393,402,n.10 (5th Cir. 2010); Orrego v. 833 W. Buena Joint Venture, 943 F.2d 730,736 (7th Cir. 1991); Gatewood v. Outlaw,560 F.3d 843,846 (8th Cir. 2009); Chae v. SLM Corp.,593 F.3d 936,949 (9th Cir. 2010); Licon v. Ladezema,638 F.3d 1303,1308 (10th Cir. 2011); Animal Legal Def. Fund v. U.S. Dept. of Ag., 789 F.3d 1206 (11th Cir. 2015); Bigelow v. Dep't of Def.,217 F.3d 875,878 (D.C. Cir. 2000); Gose v. U.S. Postal Service,451 F.3d 831,839 (Fed. Cir. 2006). * * * **(2) MUST GIVE EFFECT TO BOTH PROVISIONS:** See Thompson v. Greenwood,507 F.3d 416,422-423 (6th Cir. 2007)-(where two provisions appear to conflict,courts should give effect to both, where possible); Also see Sunshine Dev.,Inc. v. Fed. Deposit Ins. Corp.,33 F.3d 106,113 (1st Cir. 1994); United States v. Gen. Dynamics Corp.,19 F.3d 770,773-774 (2d Cir. 1994); Kaymark v. Bank of Am.,N. Am.,783 F.3d 168,179 (3d Cir. 2015); Brown & Williams Tobacco Corp. v. Food & Drug Admin.,153 F.3d 155,182 (4th Cir. 1998); S. Blasting Servs.,Inc. v. Wilkes Cty.,N.C.,288 F.3d 584,592 (4th Cir. 2002)-("[F]ederal court[s] should be exceedingly cautious about invalidiating a state statute or a local ordinance"); River of Life Kingdom Ministries v. Village of Hazel Crest,611 F.3d 367,382 (7th Cir. 2010); United States v. Jungers,702 F.3d 1066,1074 (8th Cir. 2013); In re Cervantes,219 F.3d 955,962 (9th Cir. 2000); Daleske v. Fairfield Communities,Inc.,17 F.3d 321,324 (10th Cir. 1994); J.F. Hoff Elec. Co. v. Nat'l Labor Relations Bd.,642 F.2d 1266,1281 (D.C. Cir. 1980).

Footnote 29 - Kentucky Revised Statute (KRS) 532.120(9) provides: ("An inmate may challenge a failure of the Department of Corrections to award a sentencing credit or the amount of credit awarded by motion made in the sentencing court no later than thirty (30) days after the inmate has exhausted his or her administrative remedies.").

this right. Warden White is subject to "administrative remedies." He [nor his lawyers] have final word for KDOC. Warden White is only warden of this one institution he does not speak for all KDOC. Under the law,KRS 532.120(9), the warden's boss is Central Office over all KDOC at Frankfort,Ky, where [all] "administrative remedy" appeals go. Bowling appealed to Central Office that does speak for KDOC and Warden White is subject to their responses,see Appendix M40-M69, just like Bowling. Bowling was satisfied with KDOC's responses which is the complete opposite than warden's lawyers' "convenient litigating position" it took in these proceedings.

In Caraway v. Com.,459 S.W.3d 849 (Ky. 2015)(Ky prisoner was not satisfied with KDOC's position on his pretrial custody credit & sentence calculation. He decided to skip exhausting his KRS 532.120(9) "administrative remedies" and go straight on in to his trial court. That did not work because under KRS 532.120(9) he was required to first exhaust his "administrative remedies" before going to trial court. In his case everyone agreed a KRS 532.120(3) violation happened-that he was suppose to been awarded credit. The Ky. S.Ct. ruled it did not matter he was owed pretrial custody credit under KRS 532.120(3), he was stuck with KDOC's position on his credit and affirmed lower court decision to dismiss his case for not following proper KRS 532.120(9) procedure).

Unlike Warden's lawyers' "convenient litigating position"**FN30** [that has zero (0) support from any case record] the actual KDOC's position[in Bowling's case via KRS 532.120(9) "administrative remedies"; KDOC Policy 17.4; KDOC Policy 28-01-08(II)(A)(2) & (6); Winstead v. Com.,327 S.W.3d 479,483,489-491 (Ky. 2010); Caraway v. Com.,459 S.W.3d 849 (Ky. 2015)**FN31** and 14th Amend.,U.S. Const'n].

Footnote 30 - In this particular case words & phrases synonymous to this warden's lawyers' "convenient litigating position" are: (1) Unsupport by any record; (2)Empty; (3) Has no foundation; (4) Misleading; (5) Says things KDOC said & done which is absolutely NOT true; (6) Vacant; (7) Misleading and so on.

Footnote 31 - KDOC Policy 17.4 & KDOC Policy 28-01-08(II)(A)(2) & (6) may also be called Correctional Policy & Procedure (CPP) 17.4 & CPP 28-01-08. By reference are in Kentucky Administrative Regulations at 501 KAR 6:020.

in all its' K.R.S. 532.120(9) responses [in essence] say the same thing:

(A.) KRS 532.120(3) was applied correctly when Bowling got the 1,378 days pretrial custody credit only in [capital] Laurel case, which is exact amount of time between arrest,2/25/89, and final judgment in Laurel case,12/9/92. The Rockcastle trial court final judgment,5/7/96, correctly awarded Bowling zero (0) pretrial custody days. Multiple reasons proves KDOC position:

(i) Kentucky RCr 5.22(2) states,in part: ("A defendant held to answer for longer than 60 days without having been indicted **shall** be entitled to discharge from custody ... unless the grand jury refers the matter to the to the next grant jury, which referral **must be in writing in the circuit court.**") (Emphasis added). Bowling, in Laurel case indicted 3/17/89 (20 days after arrest on 2/25/89), in Rockcastle case indicted 4/29/89 (63 days after arrest). After the 60th day with no indictment and **no** referral in writing in the circuit court to hold the case over for the next grand jury, under RCr 5.22(2), Bowling was released from custody on Rockcastle case and was soley held on "other charges" [Laurel case indictment]. When the next grand jury got around to indicting Bowling, he was done in custody on other charges. The Rockcastle case never even placed a "detainer" on Bowling until around five (5) years later on August 23,1993;

(ii) Kentucky's Lemon v. Corrections Cabinet,712 S.W.2d 370,371 (Ky. App. 1986) held: ("K.R.S. 532.120(3) is only mandatory if the accused spends time in custody relating to a charge which ultimately culminates in a conviction. Therefore,a trial court is not usually required to give credit to time served as a result **other charges.**" (Emphasis added). Bowling was discharged from custody under RCr 5.22(2) in Rockcastle case after it failed to indict in 60-days. By the time they did get around to indicting Bowling (63 days after arrest) he was done being held on "other charges;

(iii) U.S. District Court ask Ky. S.Ct. a Question of Law mislead the Ky. S.Ct. into believing KDOC has "recalcuated" Rockcastle sentence & gave

Bowling 1,378 days pretrial custody credit also in the Rockcastle case although he had done been gave that credit in Laurel case & mislead the Ky. S.Ct. to believing KDOC listed Rockcastle case served out. That is completely false that never happened then and still has not happened to this day. District Court tried to convince Ky. S.Ct. Bowling must be awarded all time between his arrest, 2/25/89, and final judgment entered in Rockcastle case,5/7/96. Ky. S.Ct. stated: ("The district court describes the jail-time credit as totaling approximately seven years, namely the time between Bowling's 1989 arrest and the 1996 conviction. As explained below, this would be too large of grant of jail-time credit, as time spent in the custody of the Department of Corrections is treated seperately,...."), Bowling v. White,No. 2014-SC-235 (Ky. 2015), Slip Op. 4,n.3. Because Bowling was in custody on "other charges" was not gave seven plus years, was not gave the time between Laurel case judgment,12/9/92 and Rockcastle case judgment,5/7/96. However, even pretrial Bowling was in custody on "other charges" (as explained above) and can not be awarded that pretrial custody credit because those "other charges" [Laurel case] has already been awarded that pretrial custody credit;

(iv) KDOC Policy 28-01-08(II)(A)(2) provides: ("Where multiple **felony** indictment are involved, any applicable credit shall be applied to the indictment which is sentenced first."). (Emphasis added). And § 28-01-08(II)(A)(6) further states: ("If an offender is being sentenced on more than one **felony** indictment at the same time, custody time credit shall be caculated seperately for each indictment .... If those **felony** detainment overlap, one indictment shall receive credit while the other indictment shall have few or zero (0) days credit."). KRS 532.120(3) requires that prisoners "shall be credited" for time spent in custody. The statute is silent as to how that credit is to be applied. Kentuucky's DOC Policy 28-01-08(II)(A)(2) & (6) supply that guidance, and appears to have

written to do so. There is no conflict between KRS 532.120(3) & KDOC Policy 28-01-08(II)(A)(2) & (6).FN32

(B.) Rockcastle case judgment entered 5/7/96, as a concurrent sentence relates back in time when Laurel case judgment entered,12/9/92. See KRS 197.035, KRS 500.110(2), KRS 532.120(1).FN33 See Appendix E4-5,M65,M59 [Not back in 1989].

(C.) Rockcastle sentence,"will be satisfied upon completion of your Death sentence." See KRS 532.120(1)(a) & (b) and/or KRS 532.120(2)(a) & (b).

KDOC Resident Record Card dated June 15,2011,see Appendix M65-M68,is consistent with KRS 532.120(9); KRS 532.120(3); KRS 532.120(1). In the 2nd block in the middle of page the table shows "Jail Credit," 1,378 days applied to "AA-001," Burglary,1st Degree, 89 CR 024,Laurel,convicted date, 12/09/1992. Zero jail credit is applied to the remaining convictions,including the Rockcastle conviction. At the bottom of table shows "Total Sentence Length: Death." At the table shows "Sentence Start Date: 12/09/1992" [not back in 1989].

Honorable Justice [John D. Seay],Ky. S.Ct. strong dissent,in part,held:

...

After the Rockcastle court entered its judgment, Bowling was in Corrections' custody on multiple indictments. Pursuant to KRS 532.120(1),

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Footnote 32 - See Bowling v. White,No. 15-6318 (6th Cir.,June 8,2017),at Slip Op. 7,also see,Appendix A7,where the majority decision writes KDOC Policy 28-01-08(II)(A)(8)-("Since a **misdeamor** and felony sentence run concurrently by statute, overlapping credit m a y be calculated." (Emphasis added). The court misunderstands this policy. The Rockcastle sentence is NOT a "misdeamor." And note - policy language uses the word "m a y" and does NOT use "shall." Clearly in the multiple KDOC responses to Bowling on this very subject [all] place Bowling's "felony" case under KDOC Policy 28-01-08(II)(A)(2) & (6).

Footnote 33 - See Bowling v. White,No. 15-6318 (6th Cir.,June 8,2017),Slip Op. 5,see Appendix A5, majority held,"we find that Bowling's Rockcastle sentence began in 1989 and that § 532.120(1) has no effect on whether Bowling was 'in custody' within the meaning of § 2254." [All] KDOC responses proves as a concurrent sentence the Rockcastle sentence "Sentence Start Date: 12/09/1992" [not back in 1989]. Also see Commonwealth v. Propes,No. 2010-CA-2315 (Ky. App. 2011);Stewart v. Ky. Parole Bd.,No. 2001-CA-2264,2003 WL 1860278,at *3 (Ky. App. 2003). See Appendix M40-M78[(KRS 532.120(9) "administrative remedy" KDOC actual responses which is complete opposite of warden's lawyers position].

the Laurel and Rockcastle sentences merged into one "aggregate" sentence of death. As Robert F. Belen (Offender Information Administrator, Department of Corrections) stated in his letter to Bowling dated July 7,2014 ....:

> "When an individual is placed in the custody of the KY DOC on multiple indictments, regardless of crime,felony class or sentence length, that individual is serving on an aggregate sentence. The KY DOC does not segregate the indictments to make individual sentence calculations if a sentence was reverse/remanded or vacated. You are serving an aggregate sentence of death to which your Rockcastle 89CR0027 is running concurrent and **will be satisfied upon the completion of your death sentence**"

...

While the U.S. District Court found the Rockcastle court mistakenly awarded Bowling zero days cutody time credit, there appears to be no basis in the record upon which the court could base that finding. It appears more likely the Rockcastle trial court's award of zero days was correct, based upon Corrections' likely initial calculation and applicable statute and policies.

The U.S. District Court also found Corrections "recalculated" Bowling's custody time credit. There aslo appears to be no basis in the record upon which the court could base that finding. Bard v. Commonwealth,327 S.W.3d 479 (Ky. 2010), has no relevance unless Corrections recalculated the custody time credit. (Emphasis added)

Bowling v. White,480 S.W.3d 911 (Ky. 2016),Slip Op. 6-7,see Appendix H6-H7.

Sixth Circuit [Honorable] Judge STRANCH, in her strong dissent,in part,held:

KRS § 532.120(3) does **not** conflict with the KDOC policies cited above- the policies and the statutory language are **easily** read togather, and appear to have been created to do so. The statute uses mandatory language ("shall") to prevent defendants from being completely denied their custody credit. It does not mandate or explain how credit should be applied. KDOC policies specify exactly how the credit is awarded in different situations. (Emphasis added)

Bowling v. White,No. 15-6318 (6th Cir.,June 8,2017),Slip Op. 16-19,see Appendix A16-A19.

"Great weight," 6th Circuit majority gave to warden's lawyers' position [which was relied on by U.S. District Court also] that KDOC had "recalculated" Rockcastle sentence to give it 1,378 days pretrial custody credit & that KDOC has listed it as served out & that KDOC has the Rockcastle sentence as starting in 1989. Problem is that "convenient litigating position" has zero (0) support from any case record. In FACT [all] KDOC KRS 532.120(9) "administrative remedy"

strongly proves the complete opposite. Allowing majority decision to stand denies Bowling due process & equal protection by singling him out for disparate treatment & sets a bad standard for all prisoners,states & habeas litigants. It threatens to erode federalism and do harm by allowing individuals and agencies to take a position [totally unsupport by zero (0) case records where all records strongly proves the complete opposite that said position] for sake of litigation alone. It annihilates prisoners right to "administrative remedies" in which all State Department of Corrections (DOC) have and all Federal Bureau of Prisons (BOP). It turns the appeal system upside down. Where no longer is the Warden of one institution subject to the appeal system-no longer subject to what his boss [Central Officer at Frankfort,Ky, over all KDOC]. It destroys KRS 532.120(9) [KDOC prisoner's right to "administrative remedy"]. Not only will this affect across board prisoner's "administrative remedies" for this but all things subject to be exhausted under "administrative remedies." See Jones v. Brock,127 S.Ct. 910 (2007), a decision by Chief Justice Roberts,in part, reads:

> ("No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], **or any other Federal law**,by a prisoner confined in any jail,prison,or other correctional facility until such **administrative remedies** as are available are exhausted." 42 U.S.C. § 1997(a). (Emphasis added). Id.

By the law put forth "or any other Federal law" prisoners must exhaust their "adminstrative remedies." Under KRS 532.120(9) is Kentucky's "administrative remedies" for KDOC to show its' exact position on pretrial custody credit & sentence calculation. Bowling fully exhausted his administrative remedies. **FN34**

Footnote 34 - See Bowling v. White,No. 15-6318 (6th Cir.,June 8,2017),Slip Op. 8 n.2,see Appendix A8: ("Bowling's strongest piece of evidence is an April 19, 2016 letter from a KDOC official indicating that,pursuant to KDOC policies, Bowling was awarded pre-trial custody credit on only his Laurel County sentences because it was the indictment sentenced first. But this letter was not in the record before the district court, and we decline to supplement the record to include it. In any event, this letter,at best, furthers the ambiguity in the record and is not dispositive of the outcome here."). See Appendix M40 (KDOC April 16,2016 letter). The only supposedly contradictory document the panel

KDOC response,2/14/2012,see Appendix M63 & KDOC response,3/20/2012,see Appendix M61, fully exhausted [KRS 532.120(9)] "administrative remedies" before §2254 petition filed,9/6/2012. [All] KDOC responses were presented to District Court. Two KDOC responses were not presented to District Court dated 4/16/2016, see Appendix M40 & dated 4/4/2016,see Appendix M45. Sixth Circuit Court was moved to include these two KDOC responses which are not saying something "new" that was not already before District Court. All KDOC responses [in essence] say same thing: **(A.)** Only got pretrial custody in Laurel case; **(B.)** Rockcastle sentence concurrent to Laurel sentence "Sentence Start Date: 12/09/1992" [not back in 1989]; **(C.)** Rockcastle sentence "will be satisfied upon the completion of your Death sentence.").

See MacKenzie v. City of Rockledge,920 F.2d 1554 (11th Cir. 1991),at n.9: ("Unequal application of state law may violate equal protection"); Zeigler v. Jackson,638 F.2d 776,779 (5th Cir. Unit B 1981); Yick Wo v. Hopkins, 118 U.S. 356,373-74 (1886). And,Wilson P. Abraham Construction Corp. v. Texas Industries,Inc.,604 F.2d 897,904 (5th Cir. 1979).

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cites is KDOC response,3/20/2012,see Appendix M61. The majority mischaracterized it as saying KDOC said sentenced "served out." Slip Op. 8. What it really says: ("I concur with the response you received from Amy Roberts on 2/14/2012. I will add if you are granted a new trial and your death sentence would be vacated. Upon recalculating your time, you would have a total sentence of 20 years which would be served out and you would be released from DOC custody to the custody of the sheriff of the Laurel County...."). This is totally consistent with KRS 532.120**(4)**,provides:("If a person has been in custody due to a charge that culminated in a dismissal,acquittal,or other disposition not amounting in a conviction,the amount of time that would have been credited under subsection (3) of this section if the defendant had been convicted of that charge shall be credited as provided in subsection (3) of this seciton against any sentence based on a charge for which a warrant or commitment was lodged during the pendency of that custody."). Also this explains Bowling's Resident Record Card, see Appendix M65, shows "Time Served: 22y 3m 13d" which does NOT mean that time is credited to Rockcastle sentence. Simply means this is how long Bowling has been in on the Laurel case. The Rockcastle sentence as concurrent,Brock v. Sowders,610 S.W.3d 591,592 (Ky. 1980),begins when Laurel case judgment was entered 12/9/1992 which is shown in Bowling's Resident Record "Sentence Start Date: 12/09/1992,"see Appendix M65. 6th Circuit Court erred not allowing KDOC response,4/16/16,see Appendix M40, it "establish[ed] beyond any doubt the proper resolution" of this issue,Inland Bulk Transfer Co. v. Cummins Engine Co.,332 F.3d 1007,1013 (6th Cir. 2003).

V.) MAJORITY DECISION, BOWLING V. WHITE,NO. 15-6318 (6TH CIR.,JUNE 8,2017), GAVE "GREAT WEIGHT," ID. SLIP OP. 8, TO WARDEN'S LITIGATING POSITION,WHICH HAS CEMENTED KDOC (THROUGH WARDEN WHITE) MADE ROCKCASTE SENTENCE "LONGEST UNEXPIRED TIME," KRS 532.120(1)(a), OVER LAUREL SENTENCES TO STATE IT AS "SERVED OUT" & KRS 532.120(4) TO LAUREL SENTENCES TO TAKE ITS' TIME AND "RECALCULATE" ROCKCASTLE SENTENCE, KENTUCKY RELINQUISHED ITS' JURISDICTION & CUSTODY IN (CAPITAL) LAUREL CASE & BOWLING MUST BE RELEASED, 8TH & 14TH AMENDS.

GRANT certiorari, because Kentucky Department of Corrections (KDOC) has surrendered its' jurisdiction & custody of Bowling in (capital) Laurel County case. KRS 532.120(1)(a) provides: ("If the sentences run concurrently, the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run."). KRS 532.120(4) provides:

> ("If a person has been in custody due to a charge that culminated in a dismissal,acquittal,or other disposition not amounting to a conviction, the amount of time that would have been credited under subsection (3) of this section if the defendant had been convicted of that charge shall be credited as provided in subsection (3) of this section against any sentence based on a charge for which a warrant or commitment was lodged during the pendency of that custody."

It would be cruel & unusual punishment and violation of due process and equal protection, 8th & 14th Amends.,to continue to hold Bowling in Kentucky's prison under the (capitalÑ Laurel case. In Winstead v. Com.,327 S.W.3d 479,483 (Ky. 2010) held,"The Executive Branch,in the form of the Department of Corrections-not the judicial branch-is ultimately responsbile for determining when prisoners in its custody are eligible for release."). Id. By the warden's litigating position gave cemented by "great weight" gave to said position proves KDOC made Rockcastle sentence "longest unexpired time," KRS 532.120(1)(a) and has disposed of the (capital) Laurel case sentences,under KRS 532.120(4),in order to take its' time and "recalculate" it to this Rockcastle sentence to claim "served out."

Under 28 U.S.C.,at 1331,1915(a) & 2201 (Declaration of Rights); 28 U.S.C., at 2241(a)("Writs of habeas corpus may be granted by the Supreme Court, any justice thereof,...."); and all other applicable law, Bowling must be released from prison.

VI.] A SUSPENDED OR STAYED SENTENCE SHOULD SATISFY § 2254(A) "IN CUSTODY" REQUIREMENT.

GRANT certiorari, 6th Circuit majority, Bowling v. White, 15-6318 (6th Cir., June 8, 2017), decided an important federal question in a way that conflicts decisions of this Court, an important question of law that has not been, but should be, settled by this Court.**FN35** The way a properly filed state action in state court can "toll" the one-year limitation on filing petition, a stayed or suspended sentence should satisfy §2254(a) "in custody" requirement. Bowling's Rockcastle sentence is argued in 2 ways: **First**, that it is easily read from [all] KDOC responses, see Appendix M40-M68, proves not one single day has been calculated toward this Rockcastle sentence, under KRS 532.120(1)(a)-&-(b), which has "merged" into one "aggregate" sentence of Death, and until the [capital] Laurel case is resolved no calculation shall be done in Rockcastle sentence; And, **second** that even if this Rockcastle sentence has been credited, under KRS 532.120(1)(a) & (b) it has "merged" into one "aggregate" sentence of Death, and no calculation shall be done until the [capital] Laurel case is resolved toward this Rockcastle sentence. Argument is just how state law/properly filed state action does in FACT "toll" one-year habeas filing deadline, equally should be applied that this state law [which does stay or suspend Bowling's Rockcastle sentence] should be gave "great weight," id. Slip Op. 8, to its' §2254 "in custody" determination to find Bowling is "in custody" because this Rockcastle sentence is stayed or suspended pending outcome of [capital] Laurel case. **FN36**

Footnote 35 - 6th Circuit majority decision conflicts with Maleng v. Cook, 490 U.S. 488, 490-491, 493-494 (1989); Lackawanna County Dist. Attorney v. Coss, 532 U.S. 394 (2001); Garlotte v. Fordice, 515 U.S. 39 (1995).

Footnote 36 - See McVeigh v. Smith, 872 F.2d 725, 727 (6th Cir. 1989)-(A suspended or stayed sentence may satisfy the § 2254(a) "in custody" requirement).

CONCLUSION

GRANT certiorari for above stated compelling reasons and after a full consideration either: **(i)** Vacate & remand [Reason 5] release Bowling from prison. 6th Circuit majority's "great weight," id.,Slip Op. 8,to warden's litigating position has cemented KDOC has voluntarily [through Warden White] made Rockcastle sentence "longest unexpired time," KRS 532.120(1)(a),over Laurel sentences in order to state it is "served out" & has disposed of Laurel sentences,under KRS 532.120(4), to take Laurel case's time and "recalculate" it toward the Rockcastle sentence; **(ii)** Vacate and remand [Reason 4] to allow § 2254 habeas proceedings to continue because 6th Circuit majority decision improperly gave "great weight" to warden's lawyers' "convenient litigating position" in its' § 2254(a) "in custody" determination [which said position has zero (0) support from any case record] because all case records strongly proves KDOC's, KRS 532.120(9) "administrative remedy" responses,see Appendix M40-M78, proves: **(a.)** Only got the pretrial custody credit in Laurel case,KDOC Policy 28-01-08(II)(A)(2) & (6), which absolutely does not conflict with KRS 532.120(3), but appears to of been written to compliment it; **(b.)** Rockcastle sentence judgment entered, 5/7/96, as concurrent sentence,KRS 532.120(1)(a),KRS 197.035,KRS 500.110(2), it relates back in time to when judgment entered in Laurel case,12/9/92 [not back in 1989]; **(c.)** Under KRS 532.120(2)(a) & (b) Rockcastle sentence "merged" into one "aggregate" Death sentence and "Will be satisfied upon the completion of your Death sentence." See Appendix M57,M59,M63; **(iii)** Vacate and remand [Reasons 1,2 & 3] to allow § 2254 habeas proceedings to continue because petition gave deference to pro se litigant under Haines is contrued is asserting challenge to [capital] Laurel County case as adversely & unconstitutionally affected by constitutionally invalid Rockcaste case [evidence]. Bowling has shown that a successful challenge in his habeas proceedings would,inter alia, that he is ACTUALLY INNOCENT of any wrongdoing in Rockcastle case. It would prove he did NOT

NOT have a gun & did NOT shoot at Ricky Smith & did NOT [throw] a gun onto the roadside. It would prove Ricky Smith over reacted shot an unarmed Ronnie Bowling and in order to keep from being prosecuted himself took his extra pistol fired shots into the station,see pp. 18-19 n.21; p. 33 n. 32 (of this document) and [placed pistol] ,see,Bowling v. White,No. 6:12-cv-189,R.1, Attach. 3 [Police lab shows not one scratch on roadside weapon]. It is physically impossible to [threw] a metal pistol from a car at speeds alleged and it not get one scratch. It would have bounced,rolled,slid and scooted. The report is consistent it was [placed] on roadside by Smith. Smith had identical twin pistol [convicted of carrying it concealed] to his roadside pistol: Both .38's, both Smith & Wesson, both revolvers, both manufactured in 1983, both identical blue finish coat. Smith gave four (4) substantially factually different statements about this incident. Had it not been for constitutional errors it would have exonerated Bowling. This establishes the [capital] Laurel case jury could not reasonably conclude that Bowling shot at Smith & had a gun. This establishes the inferences this capital jury drew from these exact things in order to find Bowling guilty has "adversely affected" the capital trial because it "had a substantial and injurious effect or influence in determining the jury's verdict,"Brecht v. Abrahamson,507 U.S. 619 (1993). A reasonable probability exists it adversely affected capital case because (i) 3 Laurel jurors affidavits shows it was only a circumstantial case that could have went either way and all 3 of them would have found Bowling NOT guilty and (ii) due to the emphasis placed on this evidence; And **(iv)** Vacate and remand [Reason 6] for §2254 proceedings the stayed or suspended sentences satisfied "in custody" requirement.

RESPECTFULLY SUBMITTED,

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