No. 17-7688

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

RONNIE LEE BOWLING, Petitioner,

v.

RANDY WHITE (Warden), Respondent.

**BOWLING'S PETITION FOR REHEARING**

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

May 4th, 2018

## ADVERSELY AFFECTED "CAPITAL CASE"

## QUESTION(S) PRESENTED

Bowling raised 6 questions to this Court in his pro se certiorari petition which are as follows:

1.) 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 CUNTY CASE [CONVICTION & SENTENCE], HE IS CURRENTLY SERVING, AS BEING ADVERSELY & UNCONSTITUTIONALLLY 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 (2001); AND/OR, GARLOTTE V. FORDICE,515 U.S. 39 (1995)?

2.) 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 CONSTITUTIONAL 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)?

3.) 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?

4.) 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 UNCONSTITUTIONALLY SINGLED BOWLING OUT FOR DISPARATE TREATMENT & SET A REALLY 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 "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?

5.) 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 LITIGATING 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?

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

## LIST OF PARTIES

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

2.) **RESPONDENT** is: Randy White (Warden), Kentucky State Penitentiary, 266 Water Street, Eddyville, Kentucky 42038-7737. Warden is represented by: Hon. Jason Bradley 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, E-mail: jason.moore2@ky.gov.

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## JURISDICTION

Supreme Court Rule 44.2 authorizes Petition for Rehearing within 25 days certiorari denied "limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Bowling v. White,U.S. S.Ct. No. 17-7688 (certiorari denied Apr. 16,2018).

## SUMMARY OF THE CASE

This case is about 28 U.S.C. § 2254(a) "in custody." Bowling convicted in 1996 in Rockcastle County, Kentucky, of attempted murder of Ricky Smith, after his direct appeal, Bowling v. Com.,96-SC-442 (Ky. 1998), and exhausting state post-conviction proceedings, filed pro se Petition for a Writ of Habeas Corpus on September 6,2012 in Bowling v. White,No. 6:12-cv-00189 (Eastern,Ky U.S. Dist. Ct.), arguing he was "in custody in violation of the Constitution or laws or treaties of the United States," id., that the 20-year-sentence had not expired at time he filed his habeas petition and is "in custody" under Maleng v. Cook,490 U.S. 488 (1989). That [all] records in this case strongly proves that.

Bowling did not concede served out but said even if it is that his case easily meets criteria for the exception for "in custody" status under Lackawanna County District Attorney v. Coss,532 U.S. 494 (2001) and/or Garlotte v. Fordice, 515 U.S. 39 (1995), as asserting a challenge to the [capital] Laurel County, Kentucky case [conviction & sentence], 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). That gave deference to which pro se litigants are entitled,Haines v. Kerner,404 U.S. 159 (1972), his Petition for a Writ of Habeas Corpus and other documents are easily read as asserting a challenge to the [capital] Laurel County case.

Bowling was arrested in 1989. Went to trial in 1992 on [capital] Laurel County case, wrongfully-convicted and wrongfully-sentence-to-death. The trial was upheld by Kentucky Supreme Court in Bowling v. Com.,942 S.W.2d 293 (Ky. 1997).

Strongly records in this case proves three things: **(A.)** Under KRS 532.120(3) to 1,378 pretrial custody credit only in [capital] Laurel County case -time of arrest [2-25-1989] to Final Judgment entered [12-9-1992]. Under CPP 28-01-08(II)(A)(2),(6) was properly awarded zero (0) days pretrial custody credit in Rockcastle County case. Yet despite [all] records strongly proving that LEGAL/FACT the warden's lawyer claimed DOC "recalculated" Bowling's Rockcastle sentence and awarded it the 1,378 days pretrial credit. Warden's claim is absolutely NOT true; **(B.)** [All] Kentucky cases, [all] Kentucky statutes strongly proves concurrent sentences relates back in time to when Final Judgment was entered in first sentence -in Laurel case Final Judgment entered 12-9-1992 [not back in 1989]. There is no "sentence" until there is first a conviction. Yet despite [all] records strongly proving that LEGAL/FACT warden's lawyer claimed DOC has Rockcastle sentence beginning in 1989. Warden's claim (via lawyer) is absolutely NOT true; **(C.)** Rockcastle case has zero (0) days calculated toward service of its sentence and multiple DOC responses say along these lines: (The Rockcastle sentence "will be satisified upon completion of your Death sentence."). Otherwords it is stayed or suspended pending outcome of the death sentence. Yet despite [all] records strongly proving that LEGAL/FACT the warden's lawyer claimed DOC has listed Rockcastle sentence "served out." That claim by warden's lawyer is absolutely NOT true.

Magistrate judge in district court giving great weight to warden's position [stated in above paragraph] held: ("the concession by the Kentucky state officer that would have custody of Bowling ... is certainly persuasive."). See Bowling v. White,6:12-cv-189,at R. 67, Slip Op. 7. Magistrate held: ("Rockcastle Circuit Court's May 7,1996 judgment expressly denies Bowling any credit ..., a certificate of appealability is warranted."). Id.,Slip Op. 12. Magistrate did NOT exercise independent judgment in §2254(a) "in custody" analysis but was unconstitutionally dependent/influenced by "certainly persausive" position of warden's lawyer making its' § 2254(a) determination constitutionally invalid.

District Court Judge looked to Magistrate Judge's recommendation it agreed

Rockcastle case concurrent to Laurel case. Bowling v. White,No. 6:12-cv-189,at R. 87. The District Court [refusing to accept the beyond any doubt strong records proving Bowling's position]when it wrote its' question to Kentucky Supreme Court mislead the state court into believing that DOC had "recalculated" Bowling's Rockcastle sentence listing it as beginning in 1989 (NOT true); mislead the state court into believing DOC has got Bowling's Rockcastle sentence listed as "served out" (NOT true); and mislead the state court into believing DOC has calculated the 1,378 days pretrial custody credit to the Rockcastle sentence (NOT true). Based on those FALSE representations of case records knowing that the Kentucky Supreme Court had no other records before it to make an informed decision the District Court carefeuly crafted its' legal question: "Whether Bard controls in this case, so that the Department of Corrections lacked the authority to correct the sentencing court's failure to award jail-time credit." Bowling v. White,No. 6:12-cv-189,at R. 88.

The Kentucky Supreme Court decision Bowling v. White,480 S.W.3d 911 (Ky. 2015) does NOT apply to this case because DOC has never did as the District Court improperly mislead it into believing of things DOC has done in this case which is FALSE. The state court decision did NOT properly analyze Rockcastle sentence as a concurrent sentence and improperly treated it as an individual sentence. The state court did NOT declare its' decision on the matter was retroactive. Bowling had done filed September 6,2012 his habeas petition long before this 2015 state court decision. The dissenting opinion in the state court opinion is correct.

Based on misinformation District Court used to set up the state court to get its answer the District Court dismissed Bowling's petition. Bowling v. White, No. 6:12-cv-189,at R. 95,96.

Bowling appealed to 6th Circuit Court. In a split decision it upheld the District Court. Bowling v. White,No. 15-6318 (6th Cir. June 8,2017). However the strong dissent at 6th Circuit Court's 3-judge panel got it right. What really made this an improper § 2254(a) "in custody" analysis is it was not an independent judgment but a judgment strongly influenced and gave "great weight," Slip Op. 8,

to warden's lawyer "convenient litigating position." Bowen v. Georgetown Univ. Hosp.,488 U.S. 204,213 (1988). As well as, easily read togather is Kentucky Revised Statute (KRS) 532.120(3) and Kentucky DOC Policy 28-01-08(II)(A)(2),(6). They appear to have been wrote to compliment eachother. Without attempting to read the statute and policy as allies for the same cause, the 6th Circuit panel majority quickly disregarded its' duty to do so. See Nat'l Labor Relations Bd. v. Jones & Laughlin Steel Corp.,301 U.S. 1,30 (1992); United States v. Thirty-Seven (37) Photographs,402 U.S. 363,369 (1971).

## STATEMENT OF THE CASE

Now before this Court, Bowling v. White,No. 17-7688, the warden's lawyer in his brief in opposition to Bowling's certiorari petition told this Court that is all Bowling is asking of the Court to do is error correction that the courts below misinterpreted Kentucky law in determining Bowling was not in custody for purposes of § 2254 when the petition was filed. That is NOT what Bowling was asking this Court. That is TRUE the courts below did misinterpret Kentucky law. Bowling ask this Court 6 questions/rasied 6 arguments in his pro se certiorari petition but has crudely did so and asks for deference to be gave to him now to allow him as a pro se petitioner to cut through the crudeness of his questions/ arguments and present the case in a way with clear cut issues for this Court that it shall qualify as "substantial grounds not previously presented," under Supreme Court Rule 44.2.

## REASONS FOR GRANTING REHEARING

### I.] WOULD IT BE A MISCARRIAGE OF JUSTICE WHERE ACTUAL INNOCENCE HAS BEEN ESTABLISHED TO NOT HOLD THE PERSON IS "IN CUSTODY" UNDER 28 U.S.C. § 2254(a)?

Warden nor his attorney has ever opposed in no court Bowling's claim of ACTUAL INNOCENCE. Bowling has established he is ACTUALLY INNOCENT of any wrongdoing in the Rockcastle County case, as well as, ACTUALLY INNOCENT of any

wrongdoing in the [capital] Laurel County case. A court may hear the merits of claims if failure to hear would result in a miscarriage of justice. See Kuhlmann v. Wilson,477 U.S. 436,454 (1986). Smith v. Murray,477 U.S. 527,537 (1986)(This Court held that actual innocence could mean innocent of the death penalty other than simply innocence of the capital offense itself).

In Kuhlmann the Court wrote: "[T]he prisoner must 'show a fair probability that, in light of all the evidence, including that alleged to have been illegally admitted (but with regard to any unreliability of it) and evidence tenably claimed to have become available only after the trial, the trier of facts would have entertained a reasonable doubt of his guilt.'" 477 U.S.,at 455,n. 17, quoting, Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments,38 U.Chi.L.Rev. 142,160 (1970).

The Court held that merits of a defaulted claim could be reached "in an extraordinary case, where a constitutional violation has probably resulted in the absence of a showing of cause for the procedural default." Murray v. Carrier, 477 U.S. 478,496 (1986). Bowling claims ACTUAL INNOCENCE and has shown through his defense presented in trials plus the other exculpatory evidence that came after his trial. The prosecution's star witness (Ricky Smith) himself possessed and [p l a c e d] the pistol onto the roadside the same pistol which was alleged to been used in the [capital] Laurel County case. Bowling has shown through three sworn affidvits from the capital trial that the case at the time of these trials presented by prosecution. These 3 jurors heard the prosecution's case. Then right before deliberation was selected off as alternates. The trial judge called them into his chambers wanted to know what they thought about prosecution's case and what their verdict would have been. [All] 3 jurors would have found Bowling N O T guilty. Three [capital] jurors affidavits as follows,reads:

**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 anothter 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 bringing into question the reliability of a prosecution's witness [Ricky Smith] 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, we should have heard from the other inmate [Gilbert Jones] who would have testified that Chappell had a pattern 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 [eyewitness], 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 becaue 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.' That 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.")

See, Bowling's Petition for Writ of Habeas Corpus, at its' Attachment 5 (These

3 capital Laurel County case jurors affidavits are located), Bowling v. White,6:12-cv-189, R.1 at Attach. 5. Also see Bowling v. Com.,168 S.W.3d 2 (Ky. 2005)(capital Laurel County case these 3 jurors affidavits and others were presented to state courts).

As messed up as the trial was back then Bowling still almost won it. After that trial we learned Tim Chappell and his lawyer Barbara Carnes both lied and committed perjury in these trials. His testimony undermined Bowling's ACTUAL INNOCENCE defense. Look at these jurors affidavits all of them mention him. After this trial an [eyewitness] Randy Harris was discovered. He was right there at exact day/time said the man he saw come running out of the gas station was NOT Ronnie Bowling. After the trial it was discovered "comparative bullet lead analysis"(CBLA) is total junk science and abandoned **everywhere** in this nation. See Ragland v. Com., 191 S.W.3d 569 (Ky. 2006). Prosecution used CBLA and said "that is the string that ties" the case togather for him. All that is gone. Bowling's ex wife (Ms. Oral Lee Isaacs) came forward with proof she was coerced into giving testimony for prosecution. There is no case left. It has been proven Ricky Smith possessed and [p l a c e d] the roadside pistol - the very pistol they said was used in capital Laurel County case.

Is ACTUAL INNOCENCE relevant in 28 U.S.C. § 2254 proceedings? This has NOT brought justice for the alleged victims in the capital case because Bowling is ACTUALLY INNOCENT. This is denying the victims,victims families, Bowling and his family justice. The just thing is rule ACTUAL INNOCENCE does satisfy "in custody" requirement and order Bowling be released from prison completely. That would be the right and just thing. There is no way these victims or their families would want Bowling to be executed or spend another day in prison when evidence proves ACTUAL INNOCENCE and proves Ricky Smith needs to explain how he came to possess that pistol. Bowling asks GRANT rehearing, hold ACTUAL INNOCENCE does meet "in custody" requirement and ORDER that Bowling be released completely from prison.

**II.] FEDERAL COURTS BELOW EMLOYED A CONSTITUTIONALLY DEFICIENT STANDARD OF ANALYSIS TO MAKE ITS' 28 U.S.C. § 2254(a) "IN CUSTODY" DETERMINATION.**

A constitutionally sound § 2254(a) "in custody" determination is independent analysis where the federal court has freely satisfied for itself its own jurisdiction. Maleng v. Cook,490 U.S. 488,490-91 (1989); Mitchell v. Maurer, 293 U.S. 237,244 (1934)-("An appellate federal court must satisfy itself ... of its own jurisdiction.").

A constitutionally invalid § 2254(a) "in custody" determination which is [d]ependent upon "great weight" gave to warden's lawyer litigating position finding it "certainly persausive" in influencing its' conclusion.

The great influence of warden's litigating position have compromised the integrity of the § 2254(a) "in custody" determination by the below federal courts,or, at least, has created the appearance of evil in said proceedings. Article III, at Section 1,in part, reads: ("The judges,both of the Supreme Court and inferior courts, shall hold their offices during good behaviour, ...,which shall not be diminished during their continuance in office."). Id. U.S. Constitution.

This Court should GRANT rehearing to determine the extent to which a federal court may give to warden's litigating position in a § 2254(a) "in custody" determination. In this case the same conclusion reach by federal courts could not have been reach without the great influence warden's litigating position had upon the court.

**III.] WARDEN RANDY WHITE'S CONCESSION THAT BOWLING IS SERVED OUT IN ROCKCASLE COUNTY SENTENCE, THAT IT HAD BEEN RECALCULATED TO BEGIN IN 1989, THAT IT HAD BEEN AWARDED THE 1,378 DAYS PRETRIAL CUSTODY CREDIT, ONLY WAY THAT CAN BE DONE UNDER KENTUCKY LAW IS UNDER K.R.S. 532.120(4) THE CAPITAL LAUREL COUNTY CASE HAS "CULMINATED IN A DISMISSAL, ACQUITTAL, OR DISPOSITION" AND UNDER K.R.S. 532.120(1)(a) WARDEN MADE THE ROCKCASTLE SENTENCE AS THE "LONGEST UNEXPIRED TIME TO RUN." UNDER 5TH,8TH & 14TH AMENDS.,U.S. CONST'N, AND U.S. SUPREME COURT CASES, KENTUCKY HAS WAIVED AND/OR FORFEITED THE LAUREL CASE SENTENCES. BOWLING MUST BE RELEASED.**

Estelle v. Gamble,429 U.S. (1976)-(Detention beyond the termination of the sentence constitutes cruel & unsual punishment when it results from "deliberate indifference" to the prisoner's interest in liberty). This case supports Bowling's

Laurel County sentences have been terminated by Warden Randy White the Kentucky officer in charge of Bowling. Continued detention beyond this terminated sentence constitutes cruel and unsual punishment because it results from "deliberate indifference" to Bowling's interest in liberty.

Because this was NOT an independent judgment by federal courts in §2254(a) "in custody" determination but analysis dependent upon Warden Randy White's concession about Ronnie Bowling's sentence. It is now made it inescapable that the Kentucky officer in charge of Bowling's Kentucky state incarceration, has terminated the [capital] Laurel County sentences under KRS 532.120(4) to take its' time and recalculate it toward the Rockcastle County sentence. That Warden Randy White has took the Rockcastle County sentence and made it the "longest unexpired time to run" over the Laurel County sentence under KRS 532.120(1)(a). Bowling must now be released from prison. [All] sentences have been terminated.

GRANT rehearing and order that Bowling be released from prison, because Kentucky Department of Corrections (DOC) has surrendered its' jurisdiction & custody of Bowling in [capital] Laurel County case. Warden Randy White has made the Rockcastle sentence the "longest" time over the Laurel sentences in order to state it is served out. 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."). Warden Randy White has disposed of the capital Laurel County sentence in order to take its' time and "recalculate" it toward the Rockcastle sentence. K.R.S. 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 curel & unusual punishment and violation of due process and equal

protection, 8th & 14th Amends.,U.S. Constn.,to continue to hold Bowling in Kentucky's prison system now that [all] his sentences have been terminated by the Kentucky officer in charge of Bowling's Kentucky incarceration.

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 responsible for determining when prisoners in its custody are eligible for release."). In Kentucky full authority by the Kentucky JUDICIAL BRANCH and Kentucky LEGISLATIVE BRANCH have been gave to Kentucky EXECUTIVE BRANCH via Kentucky Department of Corrections (DOC) to determine when its' prisoners are eligibile for release. In Bowling's case the Kentucky officer in charge of his custody has terminated Bowling's sentences and Bowling must now be released from prison. It would be a violation of the seperation of powers doctrine under the Constitution if now either the JUDICIAL or LEGISLATIVE branches tried to over ride the full authority they knowingly,voluntarily and intelligently gave to the EXECUTIVE branch via Kentucky Department of Corrections (DOC). Bowling must be released from prison completely.

Under 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,...."). This Court has listed on its' docket this as a "CAPITAL CASE" affirming the challenge to it. Bowling,pro se, with deference he is entitled under Haines v. Kerner,404 U.S. 519 (1972), asserts a challenge to the [capital] Laurel County case under Maleng v. Cook,490 U.S. 488,493-494 (1989). That this situation directly affects him being released from prison completely under this claim. This Court should GRANT rehearing and ORDER that Bowling be released completely from prison. To find because this does shorten Bowling prison time he is "in custody" on Rockcastle case then because Kentucky officer has terminated his sentences he is ORDERED released from prison.

K.R.S. 532.120(1)(a) is a state created right dealing with concurrent sentences that the Rockcastle County sentence ran concurrent to the capital Laurel County sentences. That the concurrent Rockcastle sentence can only be "satisfied" by "discharge of the term which has the longest unexpired time to run." Id. When in these proceedings Warden Randy White the Kentucky officer gave full authority by Kentucky JUDICIAL and Kentucky LEGISLATIVE to make the call about prisoners in his custody has stated that the Rockcastle sentence is satisfied then this has also discharged Bowling on the capital Laurel sentence because under Kentucky law that is the only way that can happen. This is a state created right and Bowling must now be released from prison because [all] sentences are terminated and to keep Bowling in prison now beyond this termination of his sentences constitutes cruel and unusual punishment and violation of due process and equal protection. 8th & 14th Amends.,U.S. Const'n.

K.R.S. 532.120(4) is a state created right dealing with taking the amount of time that had been credited to one sentence -in this case the capital Laurel County sentence- and applying its' credit toward the Rockcastle County sentence. The only way under Kentucky law this could be done is after the capital Laurel County case has "culminated in a dismissal,acquittal, or other disposition." When Warden Randy White during these proceedings had stated the Laurel County time and credit applies to this Rockcastle sentence then the Kentucky officer whom has been gave full authority by Kentucky JUDICIAL & Kentucky LEGILSATIVE branches has disposed of the capital Laurel County case in order to take its' time and credit it to the Rockcastle sentence. This is a state created right and Bowling must be released from prison because [all]sentences are terminated and to keep Bowling in prison now beyond this termination of his sentences constitutes cruel and unusual punishment and violation of due process and equal protection. 8th & 14th Amends.,U.S. Const'n.

This Court's authority is invoked now because Warden White has discharged Bowling during proceedings in Federal District Court, again on appeal in 6th Circuit Court, and continues with his concession Bowling's sentences are terminated before this Court. Justice Sandra Day O'Connor said: ("Prison walls do not form a barrier seperating prison inmates from the protection of the Constitution."). Bowling asks for that protection now of 8th & 14th Amendments to U.S. Constitution. Inscribed above the entrance to the Supreme Court is "EQUAL JUSTICE UNDER LAW." Bowling asks for this equal justice under law. In this case there are two things the Warden nor his attorney have ever contested and this is Bowling's claim of ACTUAL INNOCENCE nor this claim about through Warden's concession these sentences in both of Bowling's cases are satisfied, that Kentucky waived its jurisdiction and right to further hold Bowling in prison on either capital Laurel County case or the Rockcastle County case. Sound legal and factual reasons to now GRANT rehearing and ORDER that Bowling be released from prison.

Forfeiture of capital Laurel County sentences that Bowling was serving because Warden Randy White has made conscious transfer of Bowling's custody time credit from Laurel sentences to the Rockcastle sentences. Only way that can be done is under KRS 532.120(4) is if the Laurel case has been disposed of and that is what Warden Randy White in order to take its custody time credit and calculate it to the Rockcastle sentence. Also when Warden White said the Rockcastle sentence is served out. He made the Rockcastle sentence [over the Laurel sentence] the "longest unexpired time to run," KRS 532.120(1)(a). Bowling was serving the Laurel sentences but due to this conceded transfer of Bowling's custody time credit from Laurel sentence to Rockcastle sentence [by Warden Randy White] Kentucky has forfeited its' right to further hold Bowling in this prison on the Laurel County sentences. It constitutes cruel and unusual punishment to futher hold Bowling in prison beyond the termination of his sentences in Laurel County case. 8th & 14th Amends.,U.S. Const'n. Also Edmonson v. Leesville Concrete Co. Inc.,860 F.2d 1308 (5th Cir. 1988)-

(Principle of 14th Amendment's equal protection it APPLIES to governmental actual in CIVIL & CRIMINAL matters). Mackenzie v. City of Rockledge, 920 F.2d 1554 (11th Cir. 1991)-(Unequal application of state law may violate the Equal Protection Clause of 14th Amendment which requires states to give similarly situated persons or classes similar treatment under the law). KRS 532.120(4) and KRS 532.120(1)(a) Kentucky statutes proves warden's concession that Rockcastle sentence is served out and was credited with that pretrial custody credit of 1,378 days can only be so by disposing of the Laurel sentence and making the Rockcastle sentence the longest unexpired time to run [over the Laurel sentences].

Bowling invokes Due Process Clause of 5th & 14th Amendments for relief. The 5th Amendment to be applied to the federal government and the 14th Amendment to be applied to state government. As well as, 8th Amendment for relief. It would be "deliberate indifference" to hold Bowling further in prison now that his sentences have all been terminated a violation of 5th,8th & 14th Amendments. See Estelle v. Gamble,429 U.S. 97 (1976). This Court should GRANT rehearing and ORDER that Bowling be released from prison. It would unconstitutional to keep Bowling in prison any longer on sentences that have been terminated by Warden Randy White, by Kentucky Supreme Court, by U.S. District Court, by 6th Circuit Court, and now this Court is ask by Bowling to be GRANTED his freedom. Native Village of Noatak v. Hofman,872 F.2d 1384 (9th Cir. 1989); San Antonio Independent School Dist. v. Rodriquiez,411 U.S. 1 (1973)-(Once the government has given a right or something of value to a person they can not take it away or dilute it on grounds violative of the 14th Amendment).

**IV.] BASED ON A COPY OF THIS COURT'S DOCKET SHEET TO THIS CASE, IT DOES NOT APPEAR "BOWLING'S REPLY TO BRIEF IN OPPOSITION" WAS FILED AND/OR DISTRIBUTED TO THIS COURT FOR ITS' CONSIDERATION PRIOR TO ITS' DECISION TO DENY CERTIORARI (ON APRIL 16,2018). THIS IS A SUBSTANTIAL GROUND FOR GRANTING REHEARING.**

"Bowling's Reply To Brief In Opposition" was mailed March 19th,2018, to be and distributed to this Court. This Court set for conference this case on April

13th,2018.

Bowling's Petition for a Writ of Certiorar filed December 7,2017, it was docketed February 6,2018. Brief in Opposition filed March 8,2018. Bowling signed for his copy of "Brief in Opposition" on Tuesday, March 13th,2018. Bowling put in a lot of exta hours to get his document "Bowling's Reply To Brief In Opposition" typed and mailed back out Monday, March 19th,2018, to this Court. Bowling knew the Clerk's office under Supreme Court Rule 15.5 within 14-days after Brief in Opposition was filed would make copies of his cert petition and the brief in distribute it to this Court for conference. It did that very thing on Thursday, March 22nd,2018, and set this case for conference on Friday, April 13th,2018. Early in these proceedings Bowling sent a document to Justice Kagan trying to explain the mail is taking 5,6 & 7 days to get to Bowling and 5,6 & 7 days to get back to the Court. Asking for the Court to ask Clerk's office to delay in its' making copies of the cert petition and the brief in opposition and passing them out to the Court until they actually get Bowling's Reply To Brief In Opposition so it can be distributed at same time as the rest. Somehow that was interpreted as Bowling asking for an extension to file a certiorari petition or something. That is not at all what was being sought. Problem with Supreme Court Rule 15.5 when people are pro se and do not have a computer to file instantly or keep an eye on updates of the case the person is dependent up doing things the old way through snail mail.

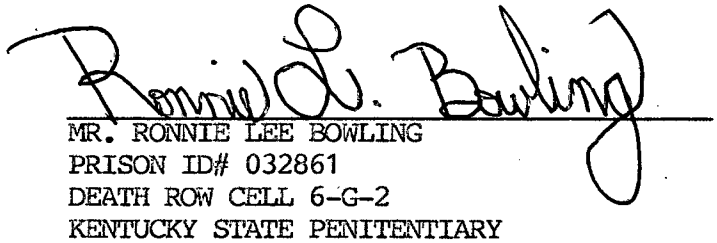
Then on Thursday, April 5th,2018, Bowling had an attorney to look on his computer to see if "Bowling's Reply To Brief In Opposition" was filed [and distributed to the Court]. At that time no it was not. The conference was Friday, April 13th,2018. That same night Bowling typed a letter to Clerk's office dated Thursday, April 5th,2018, and sent his only copy of Bowling's Reply To Brief In Opposition [just in case they had not received the original copy he mailed them on March 19th,2018]. According to this docket sheet Bowling got,see,Appendix B1-B2, it does not show it was filed [or distributed]. An exact copy is attached,see,

Appendix C1-C31, to this document. It is possible that later after Bowling checked the Clerk's office filed Bowling's Reply Brief to Brief in Opposition but did it get distributed to this Court in time for it to consider in its' conference Friday, April 13th,2018?

## CONCLUSION

Equal justice is to GRANT Bowling rehearing and GRANT him the requested relief.

RESPECTFULLY SUBMITTED,



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Additional material from this filing is available in the Clerk's Office.