No. 18-5161

IN THE

USUPREME COURT OF THE UNITED STATES

MARVIN III WADDLETON -PETITIONER

VS.

LORIE DAVIS DIR. T.D.CJ. - RESPONDANT

ON PETITION FOR REHEARING

FROM THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT:

PETITION FOR REHEARING

MARVIN III WADDLETON

1697 Fm. 980

Huntsville, Texas 77343-3314

Ph. 936-295-5756

PETITION FOR REHEARING

QUESTIONS FOR REVIEW

The Constitutionality of the Act of Congress Pursuant to 28 U.S.C. § 2403 (a) in regards to the AEDP Act of 1996, one year limitation for filing federal writ being applied to Citizens of the United States, that violate the U.S. Constitution Art. 1 § 9 Right to the Great WRit. The AEDP Act was intended for Non-Citizens, Military prisoners of War, and those Non citizens convicted of terrorism acts against the United States.

Plain error, Due Process, and Unfair Trial occur when Prosecution Misconduct, coupled with the lac't of due diligent of defense counsel failure to vist before trial, failure to quash defective indictment of substance, failure to object to amendment of indictment on day of trial-voir dire, jury instruction, range of punishment nor correspond to letters, nor investigate other brutal acts of the jail officers against petitioner WADDLETON. This affected the fundamental rights to a fair trial, wrongful conviction and miscarriage of Justice that affected my substantial rights and seriously affect[ed] the fairness, intergrity, and the reputation of judical proceedings.

I hereby certify that the grounds may have other substantial grounds not previously presented, yet intertwine on the issues that have a controlling effect on the grounds that comport with the limited intervening circumstances substantial of Rights to beyound a reasonable doubt, fair trial and adequate assistance of counsel. And this Petition for Rehearing is presented in good faith and not for delay-Non Capital case. Pursuant to 28 § 1746 on this 15th of Nov. 2018.

Marin III Waddleton

LIST OF PARTIES

PETITIONER:

MARVIN III WADDLETON

1697 Fm. 980

Huntsville, Texas 77343-3314

RESPONDENT(S):

LORIE DAVIS Director of TDCJ-ID

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Huntsville, Texas 77342-0099

Solicitor General of the United States, Room 5616

Department of Justice

950 Pennsylvania Ave N.W.

Washington, DC 20530-0001

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JURISDICTION

The date of this court judgment was on October 01, 2018, the Motion-Petition for Rehearing was placed in the prison mailing system postage paid on 10/12/18 pursuant to 28 § 1746 & Fed.R.App. 4 (c) considered filed. Received by this court on the 10/22/18. Howeveer, oddly the Notice for correction of Petition Dated on the 10/29/18 was not delivered by prison mail system until the 11/13/18 received on the 11/14/18. Pursuant to Rule 44 (b) of this court the 15 days had expired. Thus, the 3 days for mailing should give WADDLETON 12 days to file the corrected Petition for rehearing. From the 11/13/18 by Leave of this Court.

This Petition for Rehearing is presented in good faith and not for delay. For this Non-Capital case, shall not be affected by time, because the sentence continue to exhaust and only affected by a set-a-side, reversal or New Trial.

IN THE UNITED STATES SUPREME COURT

WASHINGTON, DC.

NO. 18-5161

In re: MARVIN III WADDLETON

vs.

LORIE DAVIS
Director Texas Department of Criminal Justic, I-D.

MOTION FOR REHEARING

TO THE JUDGES OF THIS COURT:

Due to the petitioner being a pro se untrainned lawyer and the denial of his petition and futher research. NOW SEE that it was mostly case law and opinion that would support his claim but did not properly show the claim.

1. The Anti-Terrorism and Effective Death Penalty Act. (AEDPA).

The Congress intent of the AEDPA was design for **NON-CITIZENS** and the prisoners captive during war by the Military. For the purpose of dentention treatment and Trial of Certain Non-Citzens in the War against Terorism. Prior to April 1,1997 Illegal immigration Reform and Immigrant Responsibility Act admitted and inadmissible Non citizens was govern by the Anti-Terrorism and Effective Death Penalty Act of 1996.

In the laws of the United Nations, Congress has the power to define, not make the laws of the nations. The **laws of armed conflict** fall within two broad categories, **Hague or Geneva**, the Hague law address restraints on conduct of hostities, including outright prohibition of certian means and methods of warfare. Geneva law primarily foucses on the treatment of civilians and combatants rendered **hors de combat** who fall into a belligerent hands.

Post the 1991 Presian Gulf War and Destert Storm 1990, Congress took measures to give the Military Courts power to process Non-Citizens involved in suspected terrorism acts. Some laws date as far back as Sept. 23, 1971 International convention for Supperssion of Unlawful Act against the safety of Civil Aviation.

Because, the petitioner is a citizen of the United States the AEDP Act shall not apply, for the Congress intent was for Non-Citizens and prisoners of war. Customary international law prohibits several practices, such as slavery, state-sponsored murders and kidnappings, torture, arbitrary dentention systematic racial discrimination, and viilation of generally accepted human rights standards U.S. Courts have recognized these practices. See Filartiga V. Penalrala, 630 F2d 976 (2cir. 1980). It was the intent of the AEDP Act to give Courts the authority to process non-citizens.

One week after the 9/11/01 (eve-for-eye retalitory) attacks. Congress passed the Authoriztion For Use of Military Force resolution (AUMF) - Pub. L. No. 107-40, 115 Stat 224 (2001). Authorized the President to use all necessary and appropirate force against those nations, orginizations or persons he determine, plainned, comitted or aided the (retatitory) terrorist attacks.

The plain meanding rule is that if a writing, or a provision is a writing, appears to unabiguous on it's face it's meaning must be determined from the writing itself without resort to any extrinsic evidence. In Davis v. Johnson, 158 F3d 805 (5th Cir. 1998). When the language of a statute is unabigous a court must follow it plain meaning. The Congress intent of the A.E.D.P. Act was to process Non-Citizens and prisoners of war. The clearest indication of Congressional intent is the words of the statue itself. See Johnson v. America Airlines Inc, 745 F2d 988,992; citing Philbrook v. Cladgetr, 421 U.S. 707, 713, 95 S.Ct. 1993 (1975);.

The A.E.D.P.A. statute of 1 year limitation on Non-Citizens is the intent of Congress and has unreasonsable denied U.S. Citizens the original right to the Great Writ and Due process clause. U.S. Const. Art. 1 § 9, & 5,6, 14 amendments. The U.S. Supreme court and even circuits courts had not yet had an occasion to interpert the AEDP-A in any meaningful, sustantive way. See Winfield V. Dorethy, 871 F3d 555,562 (7th Cir. 2017);

2. Plain Error, and Due Process:

Prior to the trial the attorney failed to quash the deficient indictment which failed to allege the necessary element for Tex. Penal Code 22.02 Agg. Assault [Serious] bodily injury. Which allowed the state to convict with only bodily injury but allow the punishment to increase from 2 to 10, to a 5 to 99 or Life sentence. The failure to include an essential element element of the charged crime, which consititues a defect of substance. The indictment is the written statement of a grand jury accusing a person therein of some act, which by law is declared to be an offense.

On the 6th of March 2006, on the day of trial and voir dire the state prosecutor moved to inter-line amend the indictment that changed the theory and the way the action occurred. The attorney for the defendant did not object to the amendment of the indictment on the day of trial which require a 10 days notice of an amendment before the trial. Such failure to object affected the substantial rights and eriously affect[ed] the fairness, integrity, or public reputation of judical proceedings. This error was plain and allowed prosecutor misconduct from the officers doing the offical duty to ...Officer brutality of unlocking a cell door or an isolated disable citizen that was forced to defend himself against 5 to 6 Smith County jailors. Some of the same officers that attacked him in January 2005 stripped him of all clothing, without a mattress, blanket or shoes for 10 days until he bonded out of jail.

The jury instruction that omitted the necessary element of [serious] bodily injury and allowed the jury to impose a term of impirsonment with a maximum sentence of 99 years to life with minimum physical injury. Imprisonment is not an appropriate means of promoting correction and rehabilitation.

The failure to object-quash the indictment, object to the amendment on the day of trial-voir dire, and defeient jury instruction of plain error that was caused by ineffective assistance of counsel bridged the miscarriage of justice.

A defective indictment are not cognizable in Fed. 2254 proceeding unless the indictment was so defective that the trial court lacked jurisdiction. Thomas v. Davis 2017 U.S. Dist. Lexis 35439 (2017); Finding defective indictment claim charged, which constitutes a defect of substance, does not deprive the trial court of jurisdiction where the Tex.C.Cr.App. had already colcluded that the indictment was sufficent, Wood V. Quaterman, 503 F3d 408,412 (5th Cir. 2007); But what happen when the substance of the indictment omitted the necessary element thaat allowed the state convict with minimum of injury and the maximum amount of sentence? Futhermore under Texas state law once the defected indictment have not been objected to before trial there is not any collateral post review. See Texas. C.Cr.P. Art. 1.14 (b). Thus, when the defendant counsel fail to object before trial and the defendant has not any means to challenge the indictment on post collateral review. See **Studer V. Texas,** 799 S.W. 2d 263 (Tex.Crim.App. 1990). Such method of justice should shock any fair minded individual that the trial court error affected their substantial rights and seriously affected the fairness, integrity, and public reputation of judical proceedings. See Henderson v. United States,568 U.S. 266,274, 133 S.Ct. 1121 (2013); United States v. Olano, 507 U.S. 725, 113 S.Ct. 1770 (1993);

When the state moved to amend the indictment on the day of trial and voir dire that changed the theory of the indictment without adequate notice of ten days before trial shift the defendant from being the aggressor to self defense. The indictment stated that during the course of doing there duty to put the defendant into the cell that I'd stabbed the Officer. But on the day of trial amended the indictment to say in the process of removing the defendant There was not any way that the state could have found me guility of agg. assault of public servant by attempting to put me into the cell, when in fact I was already inside a locked closed cell isolated. The defendant was not ready to present a case of self defense and the indictment woould have been sent back to the grand jury, which would have possibily no bill the indictment for insufficent evidence.

The counsel did not visit the defendant before going to trial stated that he did not want to get stabbed. When he could have shown that these same officers had subjected the defendant to cruel and unusal treatement when in January took all of his clothing left him in a cold cell with not any mattress blanket, socks not shoes for days until he bonded out of jail. Had the jury heard the other prior actions of the officers, and known that the necessary element of the charge offense was the victim had to have serious bodily injury Mr. WADDLETON would not have been found guilty, if the grand jury did allow the amendment, would have only been subjected to 10 years maximum for the bruise. See Tex.C.Cr.P. Art. 28.10 the amendment violated defendants constitutional right to grand jury and Tex.Const Art. 1 :10 and U.S. Const amend. 5,6, 14. Pursuant to Fed. Crim R. 52.(b).

However, the error may have corrected from a correct jury charge of the necessary element during the trial of [serious] bodily injury.

When the reasonable doubt standard has been thus compromised, it cannot be said beyound doubt that the error made no contrubition to a criminal conviction. Harrington v. California, 395 U.S. 250,255, 89 S/Ct. 1726 (1969). Rather, such an error so conflicts with an accused's right to a fair trial that the infraction can never be treated as harmless error. Chapman v. Californis, 386 U.S. 18,23, 87 S.Ct. 824 (1967);

Additional Fed.R.Crim. 52 (b) Plain error Tapia v. United States, 564 U. S. 319, 355, 131 S.Ct. 2382 (2011): Henderson v. United States, 568 U.S. 266, 133 S.Ct. 1121 (2013 at 271. The court must decide according to existing law and if be necessary to set-a-side a judgment rightful when rendered but which can not be affirmed but in violation of law, the judgment must be set aside. United States Schooner Peggy, 5 U.S. 103, 1 Cranch 103, 110 2 L.ed 49 (1801); Rule 52 (b) provides, in full that aplain error that affects sub-stantial rights may be considered even though it was not brought to the court's attention, and the fairness, integrity, or public reputation of judical proceedings. Puckett v. United States, 556 U.S. 129, 129 S.Ct. 1423 (2009);

The question whether the error flaw in the instruction, had substantial and injurious effect or influence in determining the jury verdit. Brecht v. Abrahamson, 507 U.S. 619,623, 113 S.Ct. 1710 (1993). Because the indictment did not tract the language of the penal code necessary element of finding that the victim suffered serious body injury had injurious effect and influence the determination of the jury's verdit of finding the defendant of guilt of body injury and calling it agg. assault. A finding that the jury was not correctely instructed about what elements had to be established in order to be found guilty. See Waddlington v. Sarausad, 555 U.S. 179, 129 S.Ct. 823 (2009).

Estella v. McGuire, 502 U.S. 52, 112 S.Ct. 475 (1991); Sandstorm v. Montana, 442 U.S. 510, 99 S.Ct. 2450 (1979) and In re Winship,397 U.S. 358, 90 S.Ct. 1068 (1970); Had the jury been instructed as the sufficiant of evidence for the elements of the offense as defined by a hypotetically correct jury charge that accurally set out the law in the penal code that is authorized by the indictment. Texas Penal code 22.02 the out come of the verdit would have been different. Malik v. State, 953 S.W.2d 234,240,;

With the failure of counsel to squash the indictment, object to amendment of indictment and an inadequate jury instruction bridged over to a unfair trial that clearly was wrong and affected the fairness, integrity and sustantial right a miscarriage of justice that should shock the public reputation of judical proceedings. In a ineffective counsel claim based on Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, a defendant must show that counsel failed to act reasonable considering all the circumstances (2) Must prove the reasonable probility that but for cousel's unprofessional errors the result of the trial proceeding would have been different. Id 694; In Cullen v. Pinholster, 563 U.S. 170, 131 S.Ct. 1388 (2011)1 We therefore reweigh the evidence in aggravation against the totality of available mitigation evidence that the sentencing jury considered. Wiggins, v. Smith, 539 U.S. 510, 123 S.Ct. 2527 (2003); Pompilla v. Beard, 545 U.S. 374, 125 S.Ct. 2456 (2005); Must consider the totality of the evidence before the Judge or jury. There's not any way that the jury would have found me guilty of Agg. assault because the victim only suffered a bruise during the officers brutitilty against Mr. WADDLETON, the grand jury may have No Billed the indictment if objected to the amendment and the correct jury instruction been given.

CONCLUSION

Any reasonable judge or jurist following common sence would not have found Mr. WADDLETON guilty of the more serious assault charge. And had the counsel visited the defendant before trial could have shown the jury that because, prior actions of brutality by some of the same officers, that Mr. WADDLETON was in fear of his life and safety of his well being. Futhermore, with all the Legislature and Congress road blocks placed when the State malicious prosecute, prosecutor misconduct errors, and inefective assistance of counsel failure to properly defend as if his liberty was at estate. If counsel do not do their job then the defendant is left without any reasonable due process under the law. Because, Congress and Legislature has procedural barred and taken away the Bridge to Justice.

CERTIFICATION

I MARVIN III WADDLETON wrongful convicted pro se hereby declare under the penalty of perjury that this petition for rehearing on the 11th of October 2018, shall be placed in the prison mailing system postage paid on the 10/12/2018. Pursuant to 28 § 1746 and Fed.R.App.Pro. rule 4 (c) considered filed.

Futhermore, I do certify that the Clerk letter indicating a deficiency dated 10/29/18 was not delivered until 11/13/2018, received on the 11/14/18. That under the penalty of perjury that the corrected Petition for Rehearing on the 18th of November 2018, shall be placed in the prison mailing system postage paid and a copy served to the Solicitor General DOJ 950 Pennsylvania Ave N.W. Washington DC 20530-0001 on the 11/19/2018. Pursuant to 28 § 1746 & Fed.R.App.Pro. rule 4 (c) considered filed.

Sincerely submitted,

Marvin III Waddleton

MARVIN III WADDLETON

Futher the affidavit says not.