No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re ALAN JAMES HEDRICK,
Petitioner.

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

A. QUESTION PRESENTED FOR REVIEW

Whether *McQuiggin v. Perkins*, 569 U.S. 383 (2013), permits a state court prisoner to rely on "actual innocence" as a gateway to pursue constitutional claims that were previously raised but dismissed (as time barred) in a second or successive 28 U.S.C. § 2254 petition.

B. PARTIES INVOLVED

The Petitioner is a state court prisoner currently serving a sentence of life imprisonment.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, ALAN JAMES HEDRICK, respectfully requests the Court to grant this petition for a writ of habeas corpus.

D. BASIS FOR JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241 & 1651(a) and Article III of the Constitution. *See also Felker v. Turpin*, 518 U.S. 651 (1996).

E. STATEMENT OF THE CASE

In 2001, the Petitioner was convicted in state court (Florida) of first-degree murder, burglary, and aggravated battery and sentenced to life imprisonment. In 2010, the Petitioner filed a 28 U.S.C. § 2254 petition in the Southern District of Florida raising three constitutional claims: (1) the Petitioner's statements were obtained and used against the Petitioner without affording the Petitioner his *Miranda*[1] rights; (2) the prosecutors violated the Petitioner's constitutional rights by playing the dual roles of witness and advocate; and (3) the prosecution violated the Petitioner's constitutional rights by manufacturing evidence (placing blood on the coat). However, the § 2254 petition was dismissed as time-barred.

Recently, a codefendant (Stanley Grontkowski) came forward and disclosed to an investigator (after taking an oath) that on the date in question, the Petitioner did

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

not participate in the crimes in this case. (A-4).[2] Specifically, Mr. Grontkowski stated that on the date in question, the Petitioner was intoxicated and did not enter the house where the crimes were committed (i.e., the Petitioner did not participate in any of the events that led to the victims' injuries or death). Attached to this pleading is a transcript of Mr. Grontkowski's sworn statement.[3])

Based on the foregoing, the Petitioner filed an application with the court of appeals seeking an order authorizing the district court to consider a second or successive § 2254 petition in light of new evidence establishing the Petitioner's "actual innocence."[4] In the application, the Petitioner cited the "actual innocence" exception articulated by the Court in *McQuiggin v. Perkins*, 569 U.S. 383 (2013), and the Petitioner explained that he intended to rely on his "actual innocence" as a gateway to have his otherwise barred constitutional claim considered on the merits. On May 2, 2018, the court of appeals denied the Petitioner's application. (A-1).[5] In the order,

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[2] References to the documents included in the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[3] Mr. Grontkowski's statement satisfies the standard for obtaining a new trial based on newly discovered evidence: (1) the evidence was discovered since the date of the judgment; (2) the Applicant exercised due diligence in discovering the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the new evidence would produce a different outcome at trial. *See, e.g., Waddell v. Hendry County Sheriff's Office*, 329 F.3d 1300, 1309 (11th Cir. 2003).

[4] Prior to filing the application with the court of appeals, the Petitioner unsuccessfully raised this newly discovered evidence claim in state court and therefore this claim has been exhausted in state court.

[5] As required by Rule 20.4 and 28 U.S.C. §§ 2241 and 2242, the Petitioner states that he cannot present this petition in the district court because the court of appeals denied his application.

the court of appeals held that the Petitioner cannot now rely on the constitutional claims that were previously raised in his initial time-barred § 2254 petition.

F. REASONS FOR GRANTING THE WRIT

1. The question presented is important.

This case provides the Court with an opportunity to clarify the application of the Court's holding in *McQuiggin v. Perkins*, 569 U.S. 383 (2013), to second or successive 28 U.S.C. § 2254 petitions. In *McQuiggin*, the Court held that "actual innocence," if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup v. Delo*, 513 U.S. 298 (1995), and *House v. Bell*, 547 U.S. 518 (2006), or expiration of the § 2254 statute of limitations. The Court explained that "actual innocence" is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. *See McQuiggin*, 569 U.S. at 392.

In the instant case, the Petitioner previously filed a § 2254 petition raising several constitutional claims, but the initial § 2254 petition was denied as time-barred (and thus the constitutional claims were never actually decided on the merits). Subsequently, the Petitioner became aware of newly discovered evidence that establishes his "actual innocence" – the sworn statement of codefendant Stanley Grontkowski acknowledging that the Petitioner did *not* participate in the crimes in this case. After learning of this new evidence establishing "actual innocence," the Petitioner filed an application with the court of appeals seeking an order authorizing the district court to consider a second or successive § 2254 petition. In the application, the Petitioner cited the *McQuiggin* "actual innocence" exception and the Petitioner

explained that he intended to rely on his "actual innocence" as a gateway to have his otherwise-barred constitutional claim considered on the merits. In its order denying the application, the court of appeals held that the Petitioner cannot now rely on the constitutional claims that were previously raised in his initial time-barred § 2254 petition:

> We lack jurisdiction to consider Hedrick's application because the claims he seeks to bring in his second or successive § 2254 petition are the same claims he brought in his initial § 2254 petition. His attempt to raise an actual innocence claim is solely for the purpose of getting around the § 2254 time bar so he can raise the same constitutional claims that he raised in his first § 2254 petition.
>
> Accordingly, because Hedrick seeks leave to raise three claims that he raised in his first § 2254 petition, his application for leave to file a second or successive petition is hereby DISMISSED.

(A-3).

The court of appeals' analysis is counterintuitive and contrary to the spirit of *McQuiggin*. As explained above, the Petitioner's constitutional claims were *not* previously considered on the merits because the initial § 2254 petition was time barred. In essence, the Petitioner is being punished simply for making the prior attempt to raise these constitutional claims in the initial untimely § 2254 petition. If the Petitioner had not filed the initial untimely § 2254 petition, then there would be no impediment to him now seeking federal review of his constitutional claims in a first § 2254 petition (relying on *McQuiggin* as a basis to overcome the otherwise applicable time bar). The purpose of *McQuiggin* is to allow an "actually innocent" inmate to seek review of otherwise time-barred and yet-to-be considered constitutional claims. The Petitioner falls squarely into this category. Accordingly, the Court should grant this

petition to clarify the application of *McQuiggin* to second or successive § 2254 petitions raising constitutional claims that were previously dismissed as time barred.

The Petitioner therefore asks this Court to address this issue by either accepting this case for plenary review or remanding this case to the court of appeals (or the district court[6]) for the consideration it deserves. Alternatively, the Court should remand this case for consideration under the miscarriage of justice standard set forth in *Schlup* or as a motion to reopen the initial § 2254 petition pursuant to Federal Rule of Civil Procedure 60(b).

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[6] This case should be remanded to the district court for consideration of the Petitioner's "actual innocence" claim and – if it finds that the Petitioner has satisfied the standard set forth in *McQuiggin* and *Schlup* – the merits of his constitutional claims. *See In re Warren*, 537 Fed. Appx. 457, 458-459, 461-462 (5th Cir. 2013) (Dennis, J., dissenting in part and concurring in part) ("The Supreme Court's recent decision in *McQuiggin* [] makes clear that the *Schlup* actual innocence exception has survived the passage of Antiterrorism and Effective Death Penalty Act (AEDPA), by holding that actual innocence, if proved, serves as a gateway through which a petitioner may pass . . . . I conclude that Warren has made a *prima facie* showing that he was actually innocent of the charge to which he pleaded *nolo contendre*, such that we should authorize the district court to consider his application by first assessing whether Warren has in fact satisfied the *Schlup* requirements and, if he has, to consider Warren's application for habeas relief on its merits. . . . The majority mis-perceives its role as an appeals court in purporting to decide the merits of Warren's actual innocence claim. Warren has moved for an order authorizing the district court to consider his successive habeas petition and actual innocence claim, pursuant to 28 U.S.C. § 2244(b)(3)(A). Thus, it is our job to determine whether Warren has made a *prima facie* showing that he satisfies the *Schlup* requirements for proving actual innocence, and, if so, to authorize the district court to consider both his actual innocence claim and – if it finds that Warren has in fact satisfied the *Schlup* requirements – the merits of his habeas application asserting a constitutional violation. Applying the teachings of the Supreme Court's actual innocence cases and our own cases dealing with second or successive habeas corpus applications by analogy, I would conclude that Warren has presented a *prima facie* actual innocence claim and direct the district court to consider and determine the merits of that claim.") (citations omitted).

2. The exceptional circumstances of this case warrant the exercise of this Court's jurisdiction.[7]

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). The Court has the authority to entertain original habeas petitions. *See Felker v. Turpin*, 518 U.S. 651, 660 (1996).

The Petitioner's last hope for review lies with this Court. His case presents exceptional circumstances that warrant the exercise of this Court's discretionary powers.

"The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defence of personal freedom." *Ex parte Yerger*, 8 Wall. 85, 95, 75 U.S. 85, 95 (1868). "[F]undamental fairness is the central concern of the writ of habeas corpus." *Strickland v. Washington*, 466 U.S. 668, 697 (1984). In *Harris v. Nelson*, 394 U.S. 286, 292 (1969), the Court stated the following regarding the "Great Writ":

> There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves: The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas

[7] Rule 20 of this Court requires a petitioner seeking a writ of habeas corpus to demonstrate that (1) "adequate relief cannot be obtained in any other form or in any other court;" (2) "exceptional circumstances warrant the exercise of this power;" and (3) "the writ will be in aid of the Court's appellate jurisdiction."

corpus is plenary.

(Citation omitted). The Petitioner's case presents the exceptional circumstances for which the "Great Writ" was intended to apply.

G. CONCLUSION

The Petitioner respectfully requests the Court to grant the petition for a writ of habeas corpus. The Petitioner submits that he has shown exceptional circumstances that warrant relief/review in this case. Adequate relief cannot be obtained in any other form or from any other court.

Respectfully Submitted,

/s/ Michael Ufferman
MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

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