

SEAN WEISNER
(Petitioner)

Case No. 18-5569

v.

LORIE DAVIS, DIRECTOR (TDCJ)

Motion for Leave to Petition for Rehearing in Supreme Court of The United States

Now comes, Sean Weisner (Prose) on this day 5 November 2018 with the following Motion for Leave to Petition for Rehearing due to foregoing factor in said court. On October 15, 2018 this court entered the following Order in Case No. 18-5569...

(Petition for Writ of Certiorari denied...)

The grounds for this instant petition is a Denial of Constitutional due process under the 5th amendment and 14th amendment Sec. 1. with underlining facts for support to entertain a reconsideration of the Order denying Petition for Writ of Certiorari...

As it stands multiple courts have being (Down Playing) the factor that Petitioner WEISNER, did not just have a plain Plea and Sentence hearing. There was a 4 day trial process May 9, 2011 - May 12, 2011, a full blown "Slow Plea" trial that commence, therefore trial records reflects 6 Volumes with over 2200 pages. A proceeding that caused an incompetent defendant to be subjected to trial while incompetent, causing "Extreme Harm." It very known through out all court systems in the United States that its (intolerable) and a violation of due process clause under

the 5th and 14th amendment ["nor be deprived of life, liberty, or property, without due process of law."] to allow Any incompetent defendant to stand trial while incompetent, also it is upheld by case law such as Pate v. Robinson 86 S.Ct at 836, 842 (1966), Drope v. Missouri 95 S.Ct at 896 (1975)...

Although, Petitioner Weisner's Claims are squarely foreclosed by statute as well as Authoritative court decisions made by this very Honorable Supreme Court and is not lacking any factual basis within the records of the case. (Yet!) still have went unheard, due to unconstitutional that has Petitioner Weisner time barred for being 7 days late, when indeed Weisner's Federal Habeas was filed timely! By the means and language of the federal Statute that controls on 2254 habeas...

(Honorable Justices) of this high court; Justice Elena Kagan - Justice Sonia Sotomayor - Justice Ruth Bader Ginsburg - Justice Stephen Breyer - Justice Neil Gorsuch - Justice Anthony M. Kennedy - Justice Clarence Thomas - Justice Samuel A. Alito: with all due respect to you all! The (5th Cir) court in 2003 adopted this honorable court Rule 13. in part in Roberts v. Lockrell at 319 F.3d 690-95 [Holding] "State conviction becomes final for limitation purpose when time for seeking further review ~~expires~~ expires (Regardless of Mandate issue...)

(Honorable Justices) do to the major diffidence that stands between a (Writ of Certiorari) and (Writ of Habeas 2254) The practices and enforcement by the (5th Cir) court with rule 13. of this said court in part or whole is totally unconstitutional under the 14th Amend.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein 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.

(Honorable Justices) due to [fact!] a Writ Certiorari is not a matter of any kind of constitutional right, but judicial discretion, because of such it gives this honorable high court power by discretion to have and enforce S.Ct. Rule 13. regardless of mandate issue time starts for a (Writ Certiorari)...

(Honorable Justices) Unlike this honorable high court the (5th Cir) court is bound by constitutional due process and does not have the power of judicial discretion with a §2254 or §2255 habeas petition; The due process under title 28 U.S.C §2244 in which governs all §2254 or §2255 habeas writ makes the practices and enforcement (Regardless of Mandate issue) time starts for AEDPA 1yr limitation period is not [Only] unconstitutional, but it causes conflict with decisions by a State court of last resort as well as the other 10 United States Court of Appeals, along with relevant decisions by this honorable S. Ct. all in one motion: Furthermore, constituting the (5th Cir) court as being contrary to clearly established federal law decided by this honorable Supreme Court...

(Honorable Justices) of this high court; Justice Samuel A. Alito - Justice Ruth Bader Ginsburg - Justice Stephen Breyer - Justice Neil Gorsuch - Justice Sonia Sotomayor - Justice Elena Kagan - Justice Clarence Thomas - Justice Anthony M. Kennedy; When the (5th Cir) court applied the form of structural [Regardless of Mandate issue] within this instant case, they usurped the function of title 28 U.S.C. § 2244(d)(2)... For the key fact Weisner's application for collateral review was indeed still pending or in continues by State Court of last resort statutory Law from Oct 23, 2013 - Dec 13, 2013 when the mandate was issue making collateral review final...

Cater v. State 510 S.W.2d 323, 324 (Tex Crim App 1974) Holds - "Although a Court of Appeal may have initially issued its opinion while a motion for rehearing or petition for discretionary review is viable, the direct appeal continues. A direct appeal is final when the mandate from the Court of Appeals issues... (In which was filed as an exhibit with Petition for Writ of Certiorari)

Further so, the statute language in § 2244(d)(2) is Mandatory. Legislators intention were for it to be followed by the letter of Law, in which is (why!) it states "The time during which a properly filed application for state post conviction or other collateral review with respect to the pertinent judgment^{or} claim is pending shall not be counted toward any period of limitation under this subsection" In which it has within this instant case at bar...

As so, the wording of shall in the language of § 2244(d)(2) speaks with volume, in which this honorable ~~high~~ court [greatly] understands...

(Honorable Justices) of this Supreme Court with all due respect to you all! Decisions or ruling made by this said court on this very same exact matter gives (Superhuman) strength to Petitioner Weisner's - Point of Argument - that the 58 days [October 23, 2013 - December 13, 2013] which the (5th Cir) court counted against the AEDPA 1yr period in violation of due process under the 5th Amend. and 14th Amend. Sec 1. Makes Petitioner Weisner entitled to the 58 days by law and due process under the constitution. Therefore, Petitioner's 2254 habeas is not 7 days late, but indeed timely. And should be entertained because of high prejudiced within this instant case at bar... As well as miscarriage - of - justice... (See: case law below)

Artu v. Bennett 121 S.Ct. at 361 (2000) unanimous decision Holds - "the time during which a properly filed Application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation..."

Caspariv v. Bohlen 114 S.Ct. at 948, Holds - "A conviction is 'final' only when the defendant has exhausted his state appeals and either (1) the time for requesting certiorais has passed or (2) the Supreme Court has affirmatively denied such a petition..."

Corey v. Safford 122 S.Ct. at 2134 (2002) provided greater clarification once again to All federal court system as to how to use § 2244(d)(2) with § 2254 habeas and § 2255 habeas 1yr period for the AEDPA...

Clay v. United States 123 S.Ct. at 1072 (2003) unanimous decision showcase the factor of how this very court feels about the issue of final under § 2244(d)(2)...

In addition to the already stated facts [With all due respect] if it was meant by Law to abridge one's civil liberties it would not be a constitution to stop such actions, and further so, it is this honorable high court duty in full to stop! such action when it occur.

(Honorable Justices) of this high court: Justice Sonia Sotomayor - Justice Neil Gorsuch - Justice Elena Kagan - Justice Clarence Thomas - Justice Anthony M. Kennedy - Justice Samuel A. Alito - Justice Ruth Bader Ginsburg - Justice Stephen Breyer; You all are the best judges in the land and so, by far are not by any means fools. Knowledge of our great constitution along with all Laws of the land, is within you all like the blood that's flowing through your veins inside your body. "Meaning" Petitioner Key point at hand is an extraordinary circumstance [is at this court doors] Knocking for the upmost attention because in (Plain View) by unclean hands the (5th Cir) court has deprived (Me!) of due process opportunity to cure a highly prejudiced, Fundamental-miscarriage-of-justice...

An argument that's backed by this honorable court own unanimous decisions along with federal Statutes, leaving the (5th Cir) court no legs to stand upon for there action within this instant case...

(Honorable Justices) I, Sean Weisner now asks (why?) My Grandmother and Great Grand Mother must get a shocking phone call this HOLIDAY SEASON, saying their grandson is (dead!) because he kill himself, for the reason of the being No Hope for a Pro Se Petitioner with adequate merits... [As if a unwritten rule is in effect - No Money, No Constitution rights]

- Conclusion -

Petitioner Weisner is coming before (You) honorable members of the court on hands and knees on top of broken glass, pleading for mercy to be blessed with great constitutional privilege of due process that provides in all a prompt and efficacious remedy for fairness, equal protection. That at this very time only this honorable court can make happen, for the fact of reason, the (5th Cir) court is unwilling to correct their constitutional error within this instant case at bar...

- Prayer -

Petitioner Weisner pray that this honorable high court will order the (5th Cir) courts to clean their unclean hands...

Lonchar v. Thomas 116 S.Ct. at 1293 (1996) Holds ["Dismissal of a first habeas petition is a particularly serious matter, for that dismissal denies the petitioner protections of the Great Writ entirely, risking injury to an important interest in human liberty"]

*It becomes an even more serious matter when the dismissal of the Great Writ was done by unconstitutional (Means) as well as a process that's contrary to clearly established federal law, do to the stated reasons petitioner ask for reconsideration...

Respectfully Submitted
11-5-18 Sean Weisner #1718500
Sean Weisner #1718500

CERTIFICATE OF SERVICE

I, SEAN WEISNER (Pro Se) certify that a copy ~~correction~~ ^{of the} correction of the foregoing Motion for Leave to Petition for Rehearing in the Supreme Court of The United States was put in JB (TDCT) unit mail box on 12-6-2018, to be mailed to the following address, Attorney General Office of Texas at P.O. Box 12548 Austin, TX 78711-2548

Sean Weisner #1718500 12-6-2018
3 Jester Road
Richmond, TX 77406

CERTIFICATE OF Grounds

I, SEAN WEISNER (Pro Se) certify that stated grounds for this instant petition for Rehearing are by all means limited to intervening circumstances of substantial or controlling effect...

Sean Weisner #1718500 12-6-2018
3 Jester Road
Richmond, TX 77406

CERTIFICATION OF COUNSEL

I, SEAN WEISNER (Pro Se) do hereby certify that this instant Petition for Rehearing is presented in good faith and by no means is it designed to unnecessarily delay this honorable court proceedings in no way...

Respectfull Submitted
Sean Weisner #1718500 12-6-2018
3 Jester Road
Richmond, Tx 77406

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Statute / Constitution

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Letter to the Court

Re: Correction

Dear, Clerk of Supreme Court of The United States:

On November 28, 2018 this sent back Petitioner Petition for Rehearing to be corrected in order to comply with Rule 44 of this said court. Petitioner has made a very diligent effort to comply with the Court request and feels that I, have met Court's demands, However petitioner is filing this Petition for Rehearing without the Aid of an attorney and so, is filing this petition (Pro Se) and should not be held to the stringent standards of a Trained Counsel. So please if you would notify ASAP if theres any Procedural that petitioner has failed to do...

Sincerely,
Deon Weimer (Pro Se)
12-6-18

RECEIVED

DEC 14 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.