

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL LYNN COOK — PETITIONER
(Your Name)

vs.

CHARLES L. RYAN "et al." — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT U.S. COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

"Brief for Petitioner" "Joint Appendix-A-M"

MICHAEL LYNN COOK
(Your Name)

ASPC-EYMAN-BROWNING-SMU-II-3-S-G,
~~1-2-3~~ P.O. BOX 3400
(Address)

FLORENCE, ARIZONA 85132
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Under U.S.C.A. Const. Amend. 14;

- 1). Does the "Ninth Circuit U.S. Court of Appeals decision of Which Review Is Sought Conflict with a decision of the Tenth Circuit U.S. Court of Appeals" Pursuant to LOFTIS V. CHRISMAN, 812 F.3d 1268 (10th Cir. 2016)?
- 2). Is the Petitioner entitled to Equitable Tolling where he "Actively Pursued His Judicial Remedies by Filing a" ["Defective Pleading"]?
- 3). Was the Petitioner "Affirmatively Misled by the State Courts"?
- 4). Was the Petitioner "Induced and Tricked Into allowing the Filing deadline to Pass by his adversarys Misconduct"?
- 5). IF Petitioner's "First Federal Habeas Petition alleges Newly Discovered Evidence" Is the Federal Filing Deadline 1-year from "the Date on which the ["Factual Predicate"] of the Claim... Could have been discovered Through... Due Diligence." § 2244(d)(1)(2); Pursuant to MCQUIGGIN V. PERKINS, 569 U.S. — (2013)?
- 6). Did the "State Waive the PCR Time Bar"? AND;
- 7). Is It "Improper to Address the Timeliness of a Notice of PCR Petition For the First Time on Appeal" Pursuant to this Court's Legal Reasoning In ALLEN V. SIEBERT, 552 U.S. 3 (2007) quoting PEOPLE V. BOCLAIR, 202 ILL. 2d 89, 101, 789 N.E. 2d 734, 742 (2002)?
- 8). Is "ADOC Required to Keep and Provide State Prisoners With a Copy of 28 U.S.C.A. § 2244(AEDPA) 1-year Federal Statute of Limitations, the Very same Statute being Used to render Petitioner's Federal Petition Time Barred, In their Prison Libraries" Per LEWIS V. CASEY, 518 U.S. 343 (1996)?
- 9). Did Petitioner "make a Substantial Showing of the Denial of a Constitutional Right"?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ATTORNEY GENERAL FOR THE STATE OF ARIZONA;
Assistant Attorney General
KRISTINA B. REEVES

Maricopa County Attorneys
~~DAVID M. MCDONALD~~
KATHERINE LEISCH

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~~28~~ 28 U.S.C. § 1254 (1) ... 2

28 U.S.C. § 1257 (a) ... 2

28 U.S.C. § 2403 (b) may apply and shall be served on the Attorney General of ILLINOIS. The Illinois State appeals court did not certify, pursuant to 28 U.S.C. § 2403 (b), to the State Attorney General the fact that the Constitutionality of a Statute of that State was drawn into question. See Page 35, Lines 26-28 - pg. 37, Lines 1-17.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the State Trial Court court appears at Appendix E to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 11-29-2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: APRIL 20, 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11-12-15.
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: JUNE 16, 2016, and a copy of the order denying rehearing appears at Appendix F.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244(d)(1) "A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." "The limitations period shall run from the latest of:" § 2244(d)(1)(B) "the date on which the [Impediment to Filing] an application created by state action in violation of the Constitution or Laws of the United States is removed, if the applicant was prevented from filing by such state action"; § 2244(d)(1)(D) "the date on which the [Factual Predicate] of the claim could have been discovered through the exercise of 'due diligence'." § 2244(d)(2) "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."

28 U.S.C. § 2253(c)(2) "A Certificate of Appealability may issue under paragraph (1), i.e. § 2253(c)(1), only if the applicant has made a Substantial Showing of the denial of a Constitutional right."

28 U.S.C. § 2254(a) "The [Supreme Court]... shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or Laws or treaties of the United States."

Ariz. R. Crim. P. 32.1(e).

U.S.C.A. Const. Amd. 5, "Double Jeopardy, Multiplicity, Consecutive Sentencing."

U.S.C.A. Const. Amd. 6, "Ineffective Assistance of Counsel; Perjury."

U.S.C.A. Const. Amd. 8, "Excessive Sentencing."

U.S.C.A. Const. Amd. 14, "Due Process Requirement."

STATEMENT OF THE CASE

Petitioner Michael Lynn Cook was charged, tried and convicted of the following offenses after a hung jury: Five counts of Agg. Assault, Class (3) Felonys; One cnt. of 2d degree Attempted Murder, a class (2) Felony; one cnt. of Driveby shooting, a Class (2) Felony; one cnt. of Misconduct Involving Weapons, a class (4) Felony. And sentenced to (20)-years on each count of Agg. Assault concurrent but consecutive to concurrent sentences of (20)-yrs attempted murder; (20)-yrs driveby shooting and (12)-yrs misconduct Invol. Weapons; total of (40)-years for allegedly shooting Carl S. Four (4) times in the arm and one time in the glute. App. G. pgs. 1-12. Petitioner timely appealed raising the following issues on Direct Review (D). "The trial court erred when it denied the defense motion to preclude the victim from identifying M. Cook in court because the victim's identification, as well as that of other witnesses, was inherently unreliable pursuant to STATE V. DESSUREAULT, NEIL V. BIGGER, 409 U.S. 188, 198 (1972); U.S.C.A. Const. Amend. 14. (2). "The trial court erred when it denied defense Rule 20 motion for a~~n~~ acquittal on all counts due to insufficient evidence to support the convictions;" (3) "The jury's verdict on all counts was in error because it was not supported by substantial evidence;" U.S.C.A. Const. Amend. 14. App. H. pgs. 1-69. Because witnesses An'waar N. and Ameerah N. gave recorded interviews prior to trial, in which Petitioner was not made aware of until after trial due to appellate counsel's ineffectiveness in not obtaining or reviewing "trial counsel's files" U.S.C.A. Const. Amend. 14, and also gave sworn affidavits in support of their

4.

1 recorded interviews that completely refute the false hearsay
2 statements allegedly made to the police. App. I, pgs. 1-10, pgs.
3 22-27. And the identification of M. Cook was conveyed to Carl S.
4 and Shereefah S. through Shereefah S. father, the Imam, A. Shamsiddean
5 who did not see the shooter or shooting but knows both M. Cook and
6 Carl S., App. I, pg. 15, lines 20-25 - pg. 16, lines 1-17 - pg. 17, lines 3-
7 13; pg. 19, lines 15-25 - pg. 20, lines 1-2; pg. 28, lines 14-25 - pg. 29,
8 lines 1-10 - pg. 30, lines 4-23. Carl S. told the police "he could
9 not describe the shooter it was too dark." App. I, pg. 32, line
10 28 - pg. 33, lines 1-3. Shereefah S. identified Jimmy W. as the
11 shooter. App. I, pg. 35, par. 3. The identification of M. Cook vio-
12 lated Due Process because it was tainted by lead Det. W.
13 Jenkins and neither C.S. or S.S. could identify or pick M.C.
14 out of the photo lineup until after A. Shamsiddean identified
11 Motion For Acquittal. App. K, pgs. 23-24; Dessurealt Hearing. App. K, pgs. 25-47.
5.

1 M.C.,. After the state appeals court issued its Memorandum
2 Decision affirming Petitioner's convictions and sentences App. **D**,
3 pgs. 1-10, Petitioner timely petitioned the state supreme
4 court for Review. App. **H**, pgs. 53-69. The state supreme court
5 denied Review on 12-03-09 App. **F**, pg. 1, and the Mandate issued
6 on 01-27-10. App. **D**, pgs. 11-12. The Petitioner then timely filed
7 a) Notice of PCR Petition App. **I**, pg. 37, Line 249, and "Diligently"
8 pursued his trial and sentencing transcript, trial Counsel's files
9 and his 1st PCR Petition as supported by the following court record.

DILIGENCE

10 On February 24, 2010 PCR Counsel T. Gorman was appointed
11 by Rule 32 Judge McMurdie to represent Petitioner in his
12 first PCR Rule 32 proceeding and ordered trial and appellate
13 counsel to produce Petitioner's "entire file" to PCR Counsel
14 for review and copying within (15) days. App. **J**, pgs. 1-2.

1 On 03-30-10 T. Gorman Filed a "Notice of Completion advising
2 the state trial court of no grounds to File a Rule 32 and an
3 Extension of Time to permit the Petitioner to File a Proper
4 petition." App. 3, pgs. 3-4. T. Gorman also advised Petitioner
5 via letter that "he returned Petitioner's 'entire File' to the
6 court's Clerk office." App. 3, pg. 5. The Petitioner "Diligently"
7 began petitioning the state trial court for preparation of
8 his PCR "records." App. 3, pgs. 6-10. On May 19, 2010 Judge
9 McMurdie ordered "Files." App. 3, pgs. 11-13. And on May 26, 2010
10 Judge McMurdie canceled his order for preparation of
11 Files and ordered "Petitioner needs to request all trans-
12 cripts and records from his previous defense counsel
13 due to court records indicating that transcripts were
14 previously prepared for Petitioner for his appellate case.

1 App. **J**, pg. 14. On May 26, 2010 Petitioner advised the court that
2 he had not received any records etc., App. **J**, pgs. 15-16. On
3 June 22, 2010 Judge McMurdie, again, ordered PCR and Appellate
4 counsel to provide Petitioner his "File" and both attorneys file
5 a Notice of Compliance with the court's order by 07-15-10.
6 App. **J**, pg. 17. On 07-19-10, 07-26-10 and 08-6-10 Petitioner ad-
7 vised Judge McMurdie that PCR and appellate counsel had
8 failed to comply with the court's 06-22-10 order to provide
9 Petitioner's "File", and, again, requested the "File". App. **J**, pgs. 18-
10 23. Petitioner's ~~then~~ requests was, again, denied by Judge Mc-
11 Murdie on 08-11-10 due to PCR and Appellate counsel providing
12 "False" Notices of Compliance alleging they had complied with the
13 court's 06-22-10 order. App. **J**, pg. 24. Petitioner then filed a
14 Motion to Reconsider with appellate counsel 06-30-10 Notice of

1 compliance alleging "she had sent Petitioner a copy of his "Files" but
2 did not keep a copy of the mailing label; and PCR counsel's 03-30-
3 10 letter previously stating "he had returned Petitioner's "Files" to
4 the court's Clerk office", attached. App. J, pgs. 5 and 25-27. On
5 08-27-10 Judge McMurdie, again, ordered preparation of trial
6 and sentencing "Files". App. J, pgs. 28-29. Petitioner, again,
7 motion the court for "trial counsels Files" and Judge
8 McMurdie denied the motion and ordered Petitioner to ob-
9 tain trial counsels "Files" from PCR counsel when he knew
10 that PCR counsel had failed to provide these "Files" and had
11 previously stated "he had returned Petitioner's Files to the
12 court's Clerk office". App. J, pg. 30-32. Judge McMurdie's
13 deliberate failure denial of Petitioner's motion request
14 for previous counsel to produce "trial counsels Files" and

1 previous counsels "Deliberate Refusal" to provide Petitioner
2 his "Files" caused Petitioner to initiate his First PCR Petition
3 absent his "trial counsels Files." HERE: The Petitioner Re-
4 spectfully request this Honorable Court to consider "whether these
5 deliberate Failures caused or contributed to the "Untimeliness"
6 later raised by the state court of appeals in Petitioner's and
7 Notice of PCR Petition (Based on Newly Discovered Evidence)
8 resulting in ineffectiveness, Cause and Prejudice Imposing
9 an Impediment under the Due Process Clause U.S.C.A. Const.
10 Amend. 6 and 14? Because previous Counsel has a duty to
11 provide Petitioner his "entire File" and Petitioner had no
12 control over making Counsel turnover their Files except by
13 through the Court and due to these Deliberate Failures i.e.
14 "Adverse Actions," while his 1st PCR Petition was already

1 pending, Petitioner, "Diligently," Filed a State Bar Complaint
2 In order to obtain "trial counsels Files." App. J, pgs. 33-37.
3 Trial Counsel C. Thomas Did Not provide Petitioner a
4 copy of his Files. App. J, pgs. 35-37. Appellate and PCR
5 Counsel Did Not obtain or Review the Complete court
6 record nor each of trial Counsels Files, App. J, pgs. 38-39,
7 or they would have uncovered the New Evidence presented in
8 Petitioner's 2nd Notice of PCR Petition. App. E, pgs. 3-4; App.
9 I, pgs. 1-10; 22-27; App. J, pgs. 40-41, 42-43, lines 8-15; 45-53.
10 After receipt and review of trial counsels Files Petitioner
11 "Diligently" requested and was permitted an Extension of
12 time to file a Reply to states Response in his 1st PCR Pro-
13 ceeding in State trial court. App. J, pg. 54. The Petitioner
14 then raised the following Federal Constitutional Claims

- 1 Found in his ["]Attorneys Files["] In his Initial April 12, 2011 PCR
- 2 Reply without any Objections From the State or State
- 3 trial court. 1). Trial and appellate Counsel was In-
- 4 effective. U.S.C.A. Const. Amends. 6 and 14; 2). Actual
- 5 Innocence, Mandates Relief. U.S.C.A. Const. Amend. 14; 3).
- 6 It was Ineffective Assistance not to argue that the Fed-
- 7 eral Double Jeopardy provisions precluded the Convictions
- 8 For attempted 2nd degree murder and assault on the Same,
- 9 victim by using the Same Wounds and Same bullets, U.S.C.A.
- 10 Const. Amends. 5, 6 and 14; 4). Trial Counsel was Ineffective
- 11 In not advising Petitioner of a Favorable Plea. U.S.C.A.
- 12 Const. Amend. 6; ⁵⁾ The State trial court disregarded and
- 13 refused to consider Affidavit evidence. U.S.C.A. Const. Amend. 14;
- 14 6). Petitioner was denied his right to Confront and Compulsory

1 process. U.S.C.A. Const. Amend. 6. HERE: Is Petitioner entitled
2 to Equitable Tolling as to his "Actual Innocence" Claim due to a
3 Fundamental Miscarriage of Justice. "ACTUAL INNOCENCE"; The
4 State knowingly presented False Testimony as to how many times
5 C.S. was shot. C.S. Dr., Doctor Chamberlin, told the police C.S.
6 was shot (3)-times in the arm with an exit wound to the rear-end.
7 App. K, pg. 1 par. 2 - pg. 2 par. 7. However, in the 1st Indictment the
8 State changed the number of wounds to (4). App. K, pg. 5, lines 4-6.
9 In the 2nd Indictment the State changed the number of wounds to
10 (5). App. K, pg. 9, lines 16-17. The Plea confirms State prosecutor
11 E. Dahl knowing use of Perjury as she refers to the wounds "arising out
12 of the police report" prior to filing the 2nd Indictment. App. K, pg. 11 par. 3.
13 C.S. told the 1st trial jury that "the hip wound is an exit wound." App. K
14 I, pg. 13, lines 14-17. In the 2nd trial C.S. told the jury he was "shot

1 (4)-times in the arm, one time in the glute". App. K, pg. 19, lines 6-11.

2 The prosecutor told the trial jury "M.C. shot C.S. (5)-times". App.

3 K, pg. 14, lines 9-10; 2nd trial App. K, pg. 18, lines 6-7. The Pro-

4 secutor told the trial jury "C.S. was shot (4)-times in his arm,

5 (1)-time in his hip." App. K, pg. 22, lines 12-15. C.S. gave the

6 following status about the wound(s): "Five Surgeries". App.

7 K, pg. 15, lines 16-18 - pg. 16, line 1. In the 2nd trial C.S. Stated

8 "Three Surgeries" App. K, pg. 19, lines 15-16. In the 1st trial the

9 prosecutor gave the following status about the wound(s) State's Ex-

10 hibit No. 3, (the refused to give M.C. a copy), shows an "Uncertain to-

11 tal of 6 or 7 entrance and exit wound(s) in the arm". App. I,

12 pg. 13, lines 19-25 - pg. 14, lines 2-8. In the 2nd trial State's

13 Exhibit No. 8, (the court refused to give M.C. a copy), shows "Three

14 wound(s) in the arm". App. K, pg. 20, lines 12-24. The State and

1 the victim stated there were Three entrance wounds to Seven
2 entrance wounds - Not certain. Under the doctrine of "Actual
3 Innocence" no rational trier of Fact viewing evidence in light most
4 favorable to the State can take these differing versions and
5 find Petitioner guilty. JACKSON V. VA., 443 U.S. 307 (1979); HER-
6 RERA V. COLLINS, 506 U.S. 390 (1993) or impose the sentences Peti-
7 tioner received but for the Constitutional errors. As the Due
8 Process Clause U.S.C.A. Const. Amend. 14 mandates dismissal of
9 attempted murder count-one, and assault on counts 4, 5, 6
10 and 7. Due to this being Perjury all counts must be dis-
11 missed. NAPUE V. ILLINOIS, 360 U.S. 264 (1959) as Due Process
12 requires that Petitioner be convicted and sentenced based
13 on Fair and accurate Information. App. 6, pgs. 9-11, lines 1-19.
14 And as "Assault" is the lesser included offense of Attempted mur-

1 der of the same victim for the same wounds with the
2 same bullets under the facts of this case. WILSON V. CZER-
3 NIAK, 355 F.3d 1151 (9th Cir. 2004). As the Double Jeopardy
4 provisions bar the convictions of attempted murder and assault,
5 U.S.C.A. Const. Amend. 5, Counsel was ineffective in not raising
6 these issues. KIMMELMAN V. MORRISON, 477 U.S. 365 (1986); U.S.C.A.
7 Const. Amd. 6 and 14. Hence the attempted murder convictions must
8 be vacated. RUTLEDGE V. U.S., 517 U.S. 592 (1996). The other convictions
9 must be vacated due to spillover effect. U.S. V. OLANO, 507 U.S. 725
10 (1993). App. **G**, pgs. 9-11, lines 1-19. The State trial court summarily
11 denied Petitioner's 1st PCR Petition. App. **E**, pgs. 1-2. And the State
12 appeals court and State Supreme Court Denied Review. App. **D**, pg. 13;
13 App. **F**, pg. 2. The Petitioner then attempted to File a Writ
14 of Certiorari in this Court but was denied a Timely Request

1 For an Extension of Time. App. F, pgs. 3-10. As supported

2 by the following state court record events Here, the

3 questions before this Honorable Court to consider are:

4 12. "Whether Petitioner 'Actively Pursued His Judicial

5 Remedies By Filing a [Defective Pleading]'? a). "Whether

6 Petitioner Was [Induced and Tricked, 'Affirmatively Misled]

7 By The state courts into allowing the Filing Deadline to

8 Pass"? Or, 3). "Whether the [Factual Predicate]

9 Reset the (AEDPA) 1-Year Federal Statute of Limitations

10 Clock"? And 4). "Whether The State [Waived The

11 PCR Time Bar]"? Because while His 1st PCR Petition

12 was still Pending in state court and after further

13 Review of "Trial counsels, 'Deliberate, belated received Files"

14 Petitioner "Diligently" (Uncovered (New Evidence) in the Form

1 of witnesses, Anwar N. and Amerah N. Cassette Tapes

2 of interviews mentioned in trial counsel J. Blischak's letters/

3 e-mails App. I, pgs. 1-6, that completely Refute Hearsay

4 statements allegedly made to the police. App. I, pgs. 23-27.

5 See also Affidavits in support of these witnesses Cas-

6 sette Tapes of interviews. App. I, pgs. 7-10. And also

7 uncovered the state's key witness of C. T. Kamp's Depo-

8 sition interview. App. I, pgs. 45-53. On 10-10-2011 the Peti-

9 tioner, First, Filed a "Verified Application For order to Show

10 Cause" in the state appeals court requesting that "trial

11 Counsel be directed to provide Petitioner with witnesses Anwar

12 N. and Amerah N. Cassette Tapes of interviews that were

13 missing from trial counsel's files. App. I, pgs. 1-6. After the

14 Application was denied the Petitioner "Diligently" Filed a "Special

1 Action" In the State Supreme court on 10-26-11 asking;
2 "did the state appeal court abuse its discretion in denying
3 Petitioner's 'Verified Application For Order to Show Cause'? The
4 State supreme court "declined to Accept jurisdiction of the
5 Petition For Special Action" on 03-08-12. App. **L**, pgs. 7-17. And
6 while the Special Action was, "also," pending Petitioner Filed a
7 "2nd Notice of PCR Petition (Based on Newly Discovered Evi-
8 dence) and 60 days Extension to File a Rule 32" on 01-13-12
9 raising the following issues; a). "Petitioner Did Not For-
10 feit His Right To Confront and Compulsory Process;" See also
11 App. **J**, pg. 41. b). "The Prosecutor Knowingly Introduced False
12 Hearsay Testimony through Ofc. T. Kamp;" See also App. **I**, pgs. 22-
13 27. c). "The Hearsay Statements of Ofc. T. Kamp violated The
14 Right To Confront and Compulsory Process;" See also App. **I**, pgs. 1-

1 4; pgs. 9-10. As "Counsel Objected to the Hearsay" at trial. App.
2 I, pg. 23, lines 14-25 - pg. 27. d). "Petitioner was denied his
3 right to Confront and Compulsory Process, a Fair Trial." App. L,
4 pgs. 18-49. U.S.C.A. Const. Amds. 6 and 14. "Absent Untimeliness,
5 or any objections from the state," Judge McMurdie reviewed
6 the 2nd Notice of PCR Petition and, base on the (New Evidence),
7 "Found That Petitioner Has Sufficiently Raised A Colorable
8 Claim To Permit This Rule 32 Proceeding To Move Forward." App.
9 E, pgs. 3-4. Petitioner then "Diligently" filed an "Order To Show
10 Cause" requesting "Counsel be directed to Produce the Witnesses
11 Cassette Tapes of Interviews mentioned in trial counsel
12 J. Blischak's Letters/e-mails or Contents thereof. And also
13 sent letters to each trial counsel. App. L, pgs. 50-52. Judge
14 McMurdie then appointed "Counsel T. Mitchell, who created and

1 Caused Numerous Delays," to Procure the Tapes. App. **E**, pgs. 5-8.
2 Petitioner "Diligently" pursued and requested the (New Evi-
3 dence) from PCR Counsel and State trial court and also had
4 to request a copy of all Court Orders due to PCR Counsels
5 Complete and Deliberate Failure to Communicate or Correspond
6 with Petitioner. App. **L**, pgs. 53-78. And due to the appointment
7 of Counsel the Petitioner was denied Pro se Filings or Communi-
8 cation by the state trial court. App. **E**, pg. 9. On 09-11-2012
9 PCR Counsel filed a "Notice of Completion" without Notifying
10 or Providing Petitioner a Copy. App. **J**, pgs. 42-44. "The Petition"
11 Resulted in State Court Demur~~er~~ with Leave to ReFile,
12 'Absent Untimeliness.' App. **E**, pgs. 10-11. The Complete and
13 deliberate Failure of PCR Counsel to Inform Petitioner
14 of the Notice of Completion Caused Petitioner to continue,

1 With Diligence, to pursue the (New Evidence) i.e. [Factual Predicate]
2 From the Court. App. M, pgs. 1-15. On April 01, 2013 Judge Cohen
3 ordered "Rule 32 Management Unit to send Petitioner a Copy
4 of PCR Counsel T. Mitchell's Notice of Completion and Notice
5 of Compliance." App. M, pgs. 16-17. And Based on the Information
6 i.e. [Factual Predicate] Uncovered In PCR Counsel's Notice of
7 Completion App. S, pg. 43, lines 11-15, of "Trial Counsel J. Blischak
8 confirming 'The Tapes of the Interviews cannot be located. Ad-
9 ditionally, Petitioner is correct that Mr. Blischak believed the
10 Interviews were helpful and contradicted the statements several
11 witnesses made to the police." (See attached email from John
12 Blischak); Petitioner filed his 2nd PCR Petition (Based on Newly
13 Discovered Evidence) raising the following issues: Trial Counsels
14 Ineffectiveness and the States Misconduct denied Petitioner a

1 Fair Trial, appellate counsel was ineffective in not raising these issues
2 on appeal. U.S.C.A. Const. Amds. 6 and 14; YOUNGBLOOD V. W. VA., 547 U.S. 867,
3 869-70(2006). App. **M**, pgs. 18-29. "The State was directed to Respond
4 within 45 days." App. **M**, pg. 30. The State then filed and was per-
5 mitted an "Untimely Request For Extension Of Time." App. **M**, pgs. 31-32.
6 Petitioner "Diligently" Filed a Notice of Non-Receipt, and Status Re-
7 quest. App. **M**, pgs. 33-35. The State filed a "Response Absent Untimeliness"
8 thereby "Waiving the PCR Time Bar." App. **M**, pgs. 36-40. The Petitioner
9 Replied. App. **M**, pgs. 41-43. The state trial court Judge French summarily
10 denied the 2nd PCR Petition (Based on Newly Discovered Evidence) "Absent Un-
11 timeliness." App. **E**, pgs. 12-13. After given 30 days Extension of Time
12 on 08-21-14 Petitioner timely appealed to State appeals court. App. **M**,
13 pgs. 44-47. The State, again, "Responded Absent Untimeliness." App. **M**, pgs. 48-50.
14 And on 11-12-2015, Three years and Nine months after the 2nd Notice

1 of PCR Petition (Based on Newly Discovered Evidence) was Filed, the
2 State appeals court granted Review and Denied Relief alleging
3 that "the 2nd Notice of PCR Petition Permitted by Judge McMurdie
4 on 01-23-12 was Untimely, and Petitioner's Failed to Show Due
5 Diligence". App. D, pgs. 14-18. "It was Improper to address Timeli-
6 ness of the PCR Petition for the first time on appeal, and further-
7 more "requirement that Petitioner Show Diligence was a Condition
8 to Obtaining Relief Not a Condition to Filing. U.S.C.A. Const. Amds. 14.
9 And the [Factual Predicate] should have Reset the 1-year Federal
10 Statute of Limitations Clock or It was a [Defective Pleading].
11 Petitioner was granted 30 days Extension of Time to File a Petition
12 For Review in State Supreme Court. App. F, pg. 11. The Petitioner then
13 Timely Filed a Petition For Review (Based on Newly Discovered Evidence) in
14 the State Supreme Court and on June 16, 2016 the State Supreme Court

- 1 "denied review of Petition (Based on Newly Discovered Evidence). App. F, pg. 12.
- 2 The Mandate Issued on 07-13-16. App. D, pgs. 19-21. The Petitioner Filed
- 3 a Petition For Writ of Habeas Corpus Under 28 U.S.C. § 2254 to
- 4 Arizona U.S. District Court on 11-07-16 and the U.S. District Court
- 5 dismissed the Petition as "Untimely" under 28 U.S.C. § 2244(d)(1)
- 6 App. B, pgs. 1-15, based on the alleged "Untimeliness," of the 2nd Notice
- 7 of PCR Petition (Based on Newly Discovered Evidence), raised by the State
- 8 appeal court. App. D, pgs. 14-18. The Arizona Dept. of Corrections
- 9 (ADOC) Failure to provide a Copy of 28 U.S.C. § 2244 Statute in their
- 10 prison Libraries the very Statute being used to render Petitioner's
- 11 Federal Habeas Petition Time Barred "Caused the Petition to be dismissed
- 12 for Failure to Satisfy a Technical Requirement which, because of de-
- 13 ficiencies in the prison legal assistance facilities, he could not have
- 14 known." App. M, pgs. 51-57. The Petitioner Timely appealed to the

1 9th Circuit U.S. Court of Appeals by filing a Motion For a
2 Certificate of Appealability (COA) requesting Statutory, Equitable
3 Tolling and Relief Under 28 U.S.C. § 2244(d)(1)(B); § 2244(d)(1)
4 (D); § 2244(d)(2); Ariz. R. Crim. P. 32.1(e); U.S.C.A. Const. Amends. 5,
5 6, 8 and 14; 28 U.S.C. § 2253(c)(1)(2) and § 2254. And the
6 9th Circuit denied the Motion For a (COA) Under SLACK V.
7 MCDANIEL, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(2); GONZALEZ
8 V. THALER, 565 U.S. 134, 140-41 (2012). App. A, pg. 1. However, For
9 the Foregoing and Following reasons stated herein the
10 Petitioner Contest that Pursuant to GONZALEZ V. THALER, 565
11 U.S. 134 (2012) this is... "a rare situation where... the Petitioner...
12 Faced, Deliberately, a delay in the Mandate's Issuance so
13 excessive that it prevented him... from filing a Federal habeas
14 petition within a year." And the "U.S. Supreme Court can
Review... judgments of a 'State court of last resort' or
of a lower state court IF the 'State Court of last
resort' has denied discretionary Review. U.S. Supreme
Court's Rule 13.1; see also 28 U.S.C. § 1257(a) (2006 ed.)."
26.

REASONS FOR GRANTING THE PETITION

- 1). "The Ninth Circuit U.S. Court of Appeals has entered a decision in conflict with the decision of the Tenth Circuit U.S. Court of Appeals on the same important matter," Pursuant to LOFTIS V. CHRISMAN, 812 F.3d 1268 (10th Cir. 2016). In LOFTIS, "The U.S. [Supreme Court] has applied the doctrine of 'Equitable Tolling' 'to extend a Federal Limitations Period' where 'a Claimant has Actively Pursued his Judicial Remedies by [Filing a Defective State Pleading]' during that Period." In BURNETT V. N.Y. CENT. R.R., 380 U.S. 424 [85 S.Ct. 1050, 13 L.Ed.2d 941 (1965)], "The U.S. Supreme Court noted the following as Considerations Favoring 'Equitable Tolling' in that case: 'As Petitioner here did not sleep on his rights' but brought an Action within the Statutory Period in the State Court of Competent Jurisdiction... Petitioner, then, failed to file... In the Federal Courts, not because he was disinterested, but [solely because he felt that his State Action was sufficient]". Id. at 429 [85 S.Ct. 1050]. The [Supreme Court] has also indicated that "Equitable Tolling" may be applied where a Court has led a particular Plaintiff to believe that he or she had [done all that is required under the circumstances]". See BALDWIN COUNTY WELCOME CTR. V. BROWN, 466 U.S. 147, 151 [104 S.Ct. 1723, 80 L.Ed.2d 196 (1984)]. See also BURGER V. SCOTT, 317 F.3d 1133 (10th Cir. 2003) "A careful review of th[e] Evidence demonstrates that [Petitioner 'Did Not' sleep on his Federal Rights, but rather believed that his State Petition was sufficient to begin the State's process of reviewing his claim, thus Tolling the Federal Statute]". Id. at 1143. Because the Petitioner "attempted to file... what
- 27.

INDENTED QUOTATIONS

he believed to be a sufficient State Habeas Petition" and "diligently pursued his claims," Petitioner "is entitled to Equitable Tolling of the period of time which elapsed while his 2nd PCR Petition (Based on Newly Discovered Evidence) was pending." Id. at 1142-43. And ROBINSON V. GOLDER, 443 F.3d 718, 720 (10th Cir. 2006) ("Holding that a State PCR Petition is 'Properly Filed' for Tolling purposes 'if it satisfies the state's requirements for filing such a Pleading'"); § 2244(d)(2). As in BURGER, Petitioner did not sleep on his Federal rights, but rather diligently pursued his claims by [filing the documents which he believed would be sufficient to ensure state court review of his Habeas claims]. As Judge McMurdie, "Pursuant to Ariz. R. Crim. P. 32.1(e), found that Petitioner sufficiently raised a colorable claim to [permit] the 2nd Notice of PCR Petition (Based on New Evidence), Rule 32 Proceeding to Move Forward." App. E, pgs. 3-4. In LOFTIS, [812 F.3d 1273] "Few things could more reasonably suggest that a State Court Filing will be [sufficient to permit state court review] than the [state court's express and unequivocal grant of the requested procedural relief to permit review]". As stated in BURGER, "[T]he U.S. Supreme Court has also indicated that 'Equitable Tolling may be applied where a

1 court has led a particular Plaintiff to
2 believe that he or she had done all that is
3 Required Under the Circumstances," 317 F.3d at 1142,
4 and "The State's court's [Unequivocal Grant of
5 the Extension of Time], App. E, pg. 4 par. 4; App. L,
6 pg. 19, certainly would have led a reasonable
7 Petitioner to believe he had done all that was
8 Required Under the Circumstances." "Until the
9 State appeals court dismissed the 2nd ~~Notice~~
10 PCR Petition (Based on Newly Discovered Evidence)
11 as Untimely Three (3) years and Nine (9) months
12 after it was filed, App. L, pgs. 18-19; App. D, pgs. 14-18,
13 Petitioner had no reason to know his 2nd Notice of
14 PCR Petition (Based on New Evidence) - Filed in
15 accordance with the State trial court's Un-
16 equivocal grant of Procedural relief - was not
17 sufficient to [Permit] State appellate review of
18 his Habeas Claims." (Quoting LOFTIS, 812 F.3d 1274.
19 The Court further held that "It was not at all
20 persuaded that an incarcerated Pro se litigant can
21 be held to a higher standard of legal knowledge
22 about a court than the court itself possesses."
23 "The State trial court, Judge McMurdie, apparently
24 believed it could grant the requested relief, and Petitioner
25 could reasonably rely on the State trial court's, Judge
26 McMurdie's, representations about its own powers
27 and authority." And the "Suggestion that a Pro se
28 Petitioner can be held to a higher standard of legal
29.

1 knowledge about [State Law] than the State trial
2 court itself, was also unpersuasive." 812 F.3d 1274.

3 As in LOFTIS, 812 F.3d 1275 "Faced with an
4 already, alleged, expired deadline for filing his 2nd
5 Notice of PCR (Based on Newly Discovered Evidence),
6 Petitioner reasonably requested an Extension of
7 Time and Permission to file his 2nd PCR
8 Petition in order to comply with Arizona's
9 apparently mandatory requirements for per-
10 fecting review/and relief." When the State
11 trial court, Judge McMurdie, then granted
12 Petitioner's requests to file, ~~and~~ Extension
13 of Time, Petitioner reasonably "believed that his
14 [filings were] sufficient to begin the State's
15 process of reviewing his Claim." BURGER, 317
16 F.3d at 1143. "Contrary to the Federal district
17 court's characterization, this is not a case
18 where Petitioner's filings were untimely; rather, it
19 is a case where 'Petitioner made reasonable, dili-
20 gent efforts to comply with Procedural Rules' which
21 which provided no clear guidance for the unusual
22 circumstances in which, through no fault of his own,
23 he was situated," and where "the State trial court
24 itself caused him to believe that his efforts had
25 been sufficient to ensure State review of his
26 Habeas Claims." These circumstances fall squarely
27 within BURGER'S explanation of the types of "Extra-
28 ordinary circumstances that warrant Equitable Tolling."

1 "These Circumstances also 'Cause the Court to
2 reject' any argument that Petitioner Should
3 have known his appeal was likely to be
4 dismissed as Untimely and thus Filed a)
5 [Protective Petition] In the Federal district
6 Court." When "the State trial court, Judge
7 McMurdie, [Granted the Requested Procedural
8 Relief], Petitioner had over a year left
9 to File a Timely Federal Habeas Petition,
10 due to his 1st PCR Petition still pending
11 In the State courts, and the State court's
12 Unequivocal grant of relief gave him no
13 reason to believe a [Protective Petition] was
14 necessary." "Until the State appeals Court
15 Ignored the State trial Court's, Judge McMurdie's,
16 grant of relief and dismissed Petitioner's appeal
17 as Untimely, App. E, pgs. 3-4; App. D, pgs. 14-18, Petitioner
18 had no reason to believe that his attempts to pursue
19 State Post-Conviction Relief were [Procedurally De-
20 fective³¹¹], and "he thus had no reason to File a
21 [Protective Federal Protection]." LOFTIS, 812 F.3d 1275.
22 In Sum, "Petitioner made reasonable, Diligent efforts
23 to Comply with State law Under the Unique Circum-
24 stances he Faced, and the State court, Judge Mc-
25 Murdie, 'led [Him] to believe that he... had done
26 all that [wa]s required Under the Circumstances'
27 by granting his request for an Extension of Time
28 to File his 2nd PCR Petition (Based on New Evidence),"

1 BURGER, 317 F.3d at 1142. "The record clearly
2 show that Petitioner 'Did Not sleep on his
3 Federal rights,' but rather Diligently pursued
4 his Habeas Claims through a State Process
5 that he reasonably believed to be Sufficient."
6 See Id. Thus, as in BURGER, "The Federal
7 district Court and 9th Cir. U.S. Court of Appeals
8 abused Its discretion In denying Petitioner's
9 request For 'Equitable Tolling of the Statute
10 of limitations In this Case.'" LOFTIS, 812 F.3d 1276;
11 28 U.S.C. § 2244(d)(1)(B); See also IRWIN V. DEPT. OF
12 VETERANS AFFAIRS, 498 U.S. 89 (1990) "Equitable Tolling
13 allowed where Petitioner 'Actively Pursued his Ju-
14 dicial Remedies' by [Filing a Defective Pleading] and
15 where he has been [Induced or Tricked] by his Adver-
16 sary's Misconduct Into allowing the filing deadline to
17 pass;" and PLILER V. FORD, 542 U.S. at 235 (2004)
18 "Petitioner was Affirmatively Misled by the Court." U.S.C.A. 14.

19
20 2. "The 9th Circuit U.S. Court of Appeals has de-
21 cided an Important Federal question In a way that
22 conflicts with relevant decisions of this Court." 21

23
24 a). In McQUIGGIN V. PERKINS, 569 U.S. — (2013) "Under
25 the Antiterrorism and Effective Death Penalty Act
26 of 1996 (AEDPA), 110 Stat. 1214, 'A State Prisoner Or-
27 dinarily has 1-year to file a Federal Petition for
28 Habeas Corpus'... If the Petition alleges Newly Dis-

covered Evidence, however, the filing deadline is 1-year from 'the date on which the [Factual Predicate] of the claim or claims presented could have been discovered through the exercise of due diligence', § 2244(d)(1)(D); And "Section § 2244(d)(1)(D)... (Requires Diligence)... but (Requires No Showing of Innocence)."

Because Petitioner's First Federal Habeas "Petition alleges

Newly Discovered Evidence" App. M, pgs. 58-71,

"The filing deadline is 1-year from 'the date on which the [Factual Predicate] of the claim or claims presented could have been discovered through... due diligence.'" § 2244(d)(1)(D); U.S.C.A. Const. Amend. 14.

Which is the date Petitioner received the [Factual Predicate], in PCR

Counsel's "Notice of Completion," App. J, pgs. 42-43 lines 9-15, from the

state trial court. App. M, pg. 17 par. 5, on or about April 01, 2013 -

to ^{July} April 13, 2017, one year from the 2nd PCR Mandate. App. D, pg. 19, § 2244(d)(2).

See also JOHNSON V. U.S., 544 U.S. 295 (2005) "The limitations period commences once the petitioner 'knows (or through diligence could discover) the important facts' substantiating his federal claims."

1 The U.S. District Court and 9th Cir. U.S. Court of
2
3 Appeals held Petitioner's Federal Habeas Petition Un-
4
5 timely based on the alleged Untimeliness of the 2nd No-
6
7 tice of PCR raised by the State, however, the 2nd Notice
8
9 of PCR was not Untimely because It was (Based on
10
11 New Evidence) Pursuant to Ariz.R.Crim.P. 32.1(e) and
12
13 the State courts treated as such for 3-years and 9-
14
15 months. Thus the State courts reopening of the
16
17 Rule 32 proceeding (Based on the New Evidence) i.e. [Factual
18
19 Predicate] Per AZ.Rule.C.Pro. 32.1(e) Absent Untimeliness
20
21 reset the limitations clock Pursuant to § 2244(d)(1)(D).

22
23 As In GONZALEZ V. THALER, 565 U.S. 134 (2012) "A
24 State court's reopening of direct review will reset
25 the limitations period. 555 U.S., at 121." § 2244(d)(1)(A).

26
27 According to MCQUIGGIN V. PERKINS, 569 U.S. (2013) "The [Factual
28 Predicate] reset the limitations period, Per § 2244(d)(1)(D).
34.

1	Or, Petitioner "Actively Pursued his Judicial Remedies by Filing a [Defective Pleading] and was 'Misled' in- duced and 'Tricked' into allowing the filing deadline to pass." § 2244(d)(1)(B); <u>LOFTIS V. CHRISMAN</u> , 812 F.3d 1268 (10th Cir. 2016); see also <u>IRWIN V. DEPT. OF VETERANS AFF- AIRS</u> , 498 U.S. 89 (1990); and <u>PILLER V. FORD</u> , 542 U.S. 225 (2004); <u>U.S.C.A. Const. Amend. 14</u> . See <u>SMITH V. BARRY</u> , 502 U.S. 244, 248 (1992) "An 'Informal Brief' filed after a [Defective Notice] of appeal 'counted as a [Valid Notice] of appeal.'" § 2244(d)(2).
2	Even if the 1st PCR claims were untimely the and PCR claims
3	are timely because they are (Based on Newly Discovered Evidence).
4	b). The complete Failure of Arizona, (ADEC), to provide a Copy of
5	28 U.S.C. § 2244 Statute in their prison libraries the very Statute
6	being used to render Petitioner Time Barred Imposed an Impediment
7	Pursuant to § 2244(d)(1)(B); <u>LEWIS V. CASEY</u> , 518 U.S. 343, 351, 116 S.Ct.
8	2174, 2180) "The Federal Petition was dismissed for Failure to
9	satisfy a [Technical Requirement] which, because of deficiencies in
10	the prisons legal assistance facilities, Petitioner could not have known.
11	<u>U.S.C.A. Const. Amend. 14</u> .
12	"A state court of last resort has decided an important
13	Federal question in a way that conflicts with the decision of
14	another state court of last resort." Pursuant to

1 this Court's Legal Reasoning In ALLEN V. SIEBERT, 552
2 U.S. 3 (2007) quoting PEOPLE V. BOCLAIR, 202 ILL. 2d 89,
3 101,789 N.E. 2d 734,742 (2002) ("Holding that Time Bar
4 for Filing Post-Conviction Petition Is 'an Affirmative De-
5 fense and can be raised, waived, or forfeited, by the State'").

6
7 As In the above Legal Reasoning "The Petitioner was
8 granted Leave to File... ~~this~~ 2nd PCR Petition of PEOPLE
9 V. WRIGHT, 189 ILL. 2d 1, 243 ILL. Dec. 198, 723 N.E. 2d 230
10 (1999), and the State was directed to File a Response
11 to the 2nd PCR Petition." App. E, pgs. 3-4; pgs. 10-11; App.
12 M, pg. 30.

13 "In WRIGHT, the supreme court held the Time Limit set
14 forth in the ACT Is a Statute of Limitations rather
15 than a matter of jurisdiction and It Is Improper to
16 address the Timeliness of a post-conviction Petition
17 for the First time on appeal. WRIGHT, 189 ILL. 2d at
18 9-12, 243 ILL. Dec. 198, 723 N.E. 2d at 235-37. AS "In
19 WRIGHT, the State moved to dismiss... Petitioner's
20 2nd... PCR Petition; Absent Untimeliness. App. M, pgs. 36-
21 40. "Thus, AS In WRIGHT, the State had the
22 opportunity to present any... 'Issues of Timeliness' to
23 the State trial court."

24 "In the case of... BOCLAIR, the trial court dismissed
25 his petitions at stage one of the postconviction process.
26 The State had no opportunity to raise 'Timeliness...
27 In the trial court. The Issue of Timeliness... was
28 then raised on appeal requiring the State appeals court
36.

1 to make a de novo assessment of the Petition (PEOPLE

2 V. COLEMAN, 183 Ill. 2d 366, 387-89, 233 Ill. Dec. 789, 701 N.E.

3 ad 1063, 1075 (1998)), and nothing in WRIGHT PRECLUDED

4 "...the appeals court from considering whether... BOCLAIR'S

5 petition comports with the requirements of the ACT. Simply

6 put, the petition was successful, untimely."

7 As in BOCLAIR, "the State Waived the PCR Time Bar"

8 and the State appeals court was precluded from making

9 a de novo assessment on whether the petition comported

10 with the requirements of the ACT and from finding the

11 and Petition Untimely per WRIGHT." ALLEN V. SIEBERT, 552 U.S.

12 3 (2007) quoting PEOPLE V. BOCLAIR, 202 Ill. 2d 89, 104, 789 N.E. 2d

13 734, 742 (2002); 224 (d)(2); U.S.C.A. Const. Amend. 14; 28 U.S.C.

14 § 2403(b) may apply.

15 C). Pursuant to SPENCE V. SUPERINTENDENT, GREAT MEADOW

16 CORRECTIONAL FACILITY, 219 F.3d 162, 171 (and Cir. 2000) (quo-

17 ting SMITH V. MURRAY, 477 U.S. 527, 538-39, 106 S.Ct. 2661, 91

18 L.Ed. 2d 434 (1986)) "This Court has made clear that

19 the 'Actual Innocence Exception depends on whether the

20 Constitutional Error undermined the Accuracy of the

21 Guilt or Sentencing Determination."

22 The Erroneous Convictions, Excessive Consecutive 20-year

23 Sentences, Ineffective Assistance and Misconduct Errors

1 presented herein "Undetermined the Accuracy of the Guilt

2 and Sentencing determination," U.S.C. Const. Amds. 5, 16, 8 and 14.

3 And in McCalliggin v. PERKINS, 569 U.S. (2013) "The [U.S.

4 Supreme Court] has not resolved whether a Petitioner

5 may be entitled to Habeas Relief based on a Free-

6 standing claim of Actual Innocence. HERREAV. COLLINS,

7 506 U.S. 390, 404-405 (1993). But... has recognized, however,

8 that a prisoner, otherwise subject to defenses of

9 abusive or successive use of the writ [of Habeas

10 Corpus] may have his Federal constitutional claim

11 considered on the merits if he makes a proper

12 showing of Actual Innocence." Id., at 404 (citing

13 SAWYER v. WHITLEY, 505 U.S. 333 (1992)). See also MURRAY

14 v. CARRIER, 477 U.S. 478, 496 (1986) ("[W]e think that in an

15 extraordinary case, where a constitutional violation has

16 probably resulted in the conviction of one who is actually

17 innocent, a Federal Habeas court may grant the writ even

18 in the absence of a showing of cause. For the procedural

19 default." In other words, a credible showing of Actual

20 innocence may allow a prisoner to pursue his constitutional

21 claims (here, ineffective assistance of counsel) on the

22 merits notwithstanding the existence of a procedural

23 bar to relief. "This rule, or Fundamental Miscarriage

24 of Justice Exception, is grounded in the Equitable dis-

25 cretion of habeas courts to see that Federal Cons-

26 titutional Errors do not result in the incarceration of

27 38.

1 innocent persons". HERRERA, 506 U.S., at 404. The "U.S. [Supreme Court]
2 have applied the 'Miscarriage of Justice Exception' to overcome
3 various procedural defaults. These include...failure to ob-
4 serve state procedural rules, including filing deadlines, see
5 COLEMAN V. THOMPSON, 501 U.S. 722, 750 (1991); CARRIER, 477 U.S., at
6 495-496."

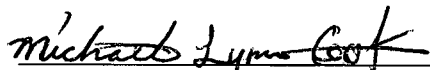
7 The Petitioner has "Diligently pursued his 'Judicial
8 Remedies' in the face of impediment and utter disregard by
9 Counsel." HOLLAND V. FLORIDA, 560 U.S. 631 (2010). Where as Petitioner
10 has made a Substantial Showing of the denial of a Constitutional
11 right entitling him to Statutory, Equitable Tolling and Relief pursuant
12 to U.S.C.A. Const. Amends. 5, 6, 8 and 14. And pursuant to
13 SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000) ("Jurist of reason
14 would find it debatable whether the Petition states a valid
15 claim of the denial of a Constitutional right and Jurist of
16 reason would find it debatable whether the District Court
17 and 9th Circuit was correct in their procedural ruling"). § 2253(c)(2).
18

19 For the foregoing reasons stated herein Petitioner Respect-
20 fully request this HONORABLE COURT Grant Certiorari and
21 Remand this case to the District Court for further proceedings
22 consistent with this Court's ruling; U.S.C.A. Const. Amd. 14.
23
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28

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Michael Lynn Cook

Date: JULY 08 th, 2018