IN THE UNITED STATES SUPREME COURT

OMAR ODALE BROCKMAN #401131

Petitioner-Appellant

Original Case No. 4:16-cv-13441

Sixth Cir. COA No. 17-2268

v

U.S. Sup. Ct. No._____

SHERRY L. BURT

(MICHIGAN DEPT. CORR. WARDEN)

Respondent-Appellee,_____/

PETIONER'S PETITION

FOR WRIT OF CERTIORARI

Respectfully Submitted,

May 10th, 2018

Omar Brockman

Petitioner in Pro Se
Omar Odale Brockman #401131
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Michigan 49442

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Q1. Does petitioner Brockman properly asserts that Sup. Ct. R. 10(c) warrant him certiorari relief because the sixth circuit court of appeals resolution in the context of an certificate of appealability on his subject matter jurisdiction claims were amiss and in substantial conflict with relevant decision of this court, when it determined that jurists of reason would not find the district court's procedural rulings rejecting his subject matter jurisdiction claims for failure to meet the AEDPA's statute of limitations under 28 U.S.C. § 2244(d) debatable , notwithstanding the clearly established federal law enunciated in U.S. v Cotton 122 S.Ct 1781 which cautioned that questions of subject matter jurisdiction cannot be forfeited or waived?

Petitioner Brockman says. YES!

Respondent Says. NO!

Q2. When a party in an action raises a lack of subject matter jurisdiction question, or even if the party fails to challenge the question of that jurisdiction, and it reach the attention of the court including the U.S. Supreme Court, does the court has a special independent obligation to determine whether the subject matter jurisdiction exists, and to correct any exiting flaw in the subject matter jurisdiction of the case?

Petitioner Brockman says. YES!

Respondent Says. NO!

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Miscellaneous Statute, Rules and Articles

Federal Caselaw

State Caselaw

REFERENCE TO OPINIONS BELOW

The petitioner's motion for relief from judgment raising the grounds presented in this instant application for writ of certiorari were first denied by the sate trial court in an unpublished opinion and order. See Appendix #2- Case No. 07-004028-01; Petitioner subsequently filed for leave to appeal in the Michigan Court of Appeals, which was denied in an unpublished opinion. See Appendix #4- Michigan Court of Appeals Order. Docket No. 322657; Petitioner sought leave to appeal in the Michigan Supreme Court, which was denied in an unpublished opiñion. See Appendix #6- Michigan Supreme Court Docket No. 150243; Petitioner next pursued the federal habeas corpus forum. To which, after being fully apprise of the disputed matters, the eastern district court of Michigan, the Honorable Judge Linda V. Parker issued an opinion and order granting the respondent's motion to dismiss the habeas petition, and denying certificate of appealability in an unpublished opinion. See Appendix #10-civil action No. 16-13441; Finally, petitioner applied for certificate of appealability in the sixth circuit court of appeals, and was denied relief in an unpublished opinion. See appendix #12- Sixth Circuit Court of Appeals Docket No. 17-2268.

STATEMENT OF BASIS FOR JURISDICTION

The petitioner Omar Odale Brockman, through this instant petition for writ of certiorari seek review of an March 20, 2018 order issued by the Sixth Circuit Court of Appeals, concerning their resolution on his request for a certificate of appealability. See Omar Brockman v Warden St. Louis Correctional Facility, No. 17-2268. This petition for writ of certiorari is timely filed within the requisite 90 days time period following the Sixth Circuit Court of Appeals March 20, 2018 order appealed. Thus, this court retains jurisdiction pursuant to 28 U.S.C. § 1254.

MISCELLANEOUS PROVISIONS

U.S. Const Amendment 14.

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 abride 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 laws.

Michigan Compiled Law (MCL) 764.1a

Sec. 1a. (1) A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk.

Michigan Compiled Law (MCL) 766.15(1)

Sec. 15. (1) Except as provided in subsection (2) or (3), all examinations and recognizances taken by a magistrate pursuant to this chapter shall be immediately certified and returned by the magistrate to the clerk of the court before which the party charged is bound to appear. If the magistrate refuses or neglects to return the same, the magistrate may be compelled immediately by order of the court, and in case of disobedience may be proceeded against as for a contempt by an order to show cause or a bench warrant.

Michigan Compiled Law (MCL) 767.1

Sec. 1. The several circuit courts of this state, the recorders courts and any court of record having jurisdiction of criminal causes, shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for crimes, misdemeaners and offenses, to issue

writs and possess and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictments.

Michigan Compiled Law (MCL) 767.40

Sec. 40. All informations shall be filed in the court having jurisdiction of the offenses specified in the information after the proper return is filed by the examining magistrate and by the prosecuting attorney of the county as informant. The information shall be subscribed by the prosecuting attorney, or in his or her name by an assistance prosecuting attorney.

Michigan Court Rules of 1985 (MCR) RULE 6.101(B)

(B) Signature and Oath. The complaint must be signed and sworn to before a judicial officer or court clerk.

Michigan Court Rules of 1985 (MCR) RULE 6.110(g)

(G) Return of Examination. Immediately on concluding the examination, the court must certify and transmit to the court before which the defendant is bound to appear the prosecutor's authorization for a warrant application, the complaint, a copy of the register of actions, the examination return, and any recognizances received.

Michigan Court Rule of 1985 (MCR) RULE 8.119(C) and (D)(1)(c)

(C) Filing of Papers. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Papers filed with the clerk of the court must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may reject papers which do not conform to MCR 2.113(C)(1) and MCR 5.113(A)(1).

(D) Records kept by the Clerk. The clerk of the court of every trial court shall keep records in the form and style the court prescribes and in accordance with Michigan Supreme Court records standards and local court plans. A court may adopt a computerized, microfilm, or word-processing system for

maintaining records that substantially complies with this subrule.

(1) Indexes and Case Files. The clerk shall keep and maintain records of each case consisting of a numerical index, an alphabetical index, a register of action, and a case file in such form and style as may be prescribed by the Supreme Court...

(c) Register of Actions. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre-and post-judgment information. When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, The following shall be noted chronologically on the register of actions as it pertains to the case:

(i) the offense;
(ii) the judge assigned to the case;
(iii) the fees paid;
(iv) the date and title of each filed document;
(v) the date process was issued and returned, as well as the date of service;
(vi) the date of each event and type and result of action;
(vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;
(viii) the orders, judgments, and verdicts;
(ix) the judge at adjudication and disposition;
(x) the date of adjudication and disposition; and
(xi) the manner of adjudication and disposition.

Each notation shall be brief, but shall show the nature of each paper filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

28 U.S.C. § 2244 Finality of Determination

(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 limitation period shall run from the lastest of-

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(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;

(C) the date on which the constitutional right asserted was initially recognized by the Suprame Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2253 Appeals

(c)(1) unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals...

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2254 State custody; remedies in Federal courts

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted

with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim-

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law; as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the states court proceeding.

STATEMENT OF THE CASE

Following a bench trial, petitioner Brockman was convicted of second degree murder, assault with intent to do great bodily harm less than murder, being a felon in possession of a firearm, and possessing a firearm during the commission of a felony. The trial court sentenced the petitioner to an aggregate prison term of 27 to 72 years.

December 2013, Brockman commenced an postconviction motion for relief from judgment in the state trial court. In his postconviction motion he raised the following grounds for relief inter alia:

1.

The defendant asserts that his convictions were the result of a jurisdictional defect in violation of the US Const Ams 5, 14; Const 1963 art 1 § 17 where the district court failed to acquire jurisdiction via a signed and sworn complaint mandating reversal of nis convictions for want of jurisdiction

2.

The defendant conviction were the result of a jurisdictional defect in violation of the US Const Ams 5, 14; Const 1963 art 1 § 17 where the trial court failed to acquire jurisdiction via of filing of an proper magistrate return as required by the provisions of MCL 766.15 mandating reversal of his convictions for want of jurisdiction

3.

The defendant convictions were the result of a jurisdictional defect in violation of the US Const Ams 5, 14; Const 1963 art 1 § 17 being that no felony information was filed in the trial court where upon the charges were made to be heard, tried and adjudicated the same, the defendant convictions are invalid under MCL 767.1; MCL 767.40 and must be reversed for want of jurisdiction

See App #1 at pp. 2,5,7, and 9

Brockman unsuccessfully sought postconviction appellate review, see People v Brockman , No 322657 (Mich Ct. App. Sept. 4, 2014), and in the Michigan Supreme Court. See People v Brockman 865 N.W.2d 27 (June 30, 2015), which raised the same issues.

September 2016, Brockman filed a writ for habeas corpus pursuant to AEDPA's 28 U.S.C. § 2254, Essentially raising the same grounds challenged in his postconviction motion for relief from judment. Relevant to this instant proceeding, Brockman specifically raised in his petition for writ of habeas corpus among other issues that:

1.

The states district and trial court's lacked subject matter jurisdiction over petitioner Brockman's case so it is a moot point whether petitioner Brockman has been tried and convicted by a court of competent jurisdiction as due process demands, this irregularity questions the sound judicial process of a valid conviction; habeas relief is warrant for want of jurisdiction in the state court proceeding. U.S. Const Am 14

See App #7

March 27, 2017 respondent filed a "Motion for Dismissal of Brockman's petition for writ of habeas corpus under habeas rule 4". According to the respondent, dismissal was warrant on Brockman's entire petition for writ of habeas corpus under habeas rule 4 because he had failed to file within the applicable statute of limitations under 28 U.S.C. § 2244. See App #8.

May 2017, Brockman made a reply to the respondents rule 4 position. Brockman argued:

1.

A cause which questions the subject matter jurisdiction of a court can never be forfeited or waived, Brockman's first claim presented on his habeas petition which essentially consolidate two claims questions the validaity of the statutory subject matter jurisdiction of both the state district and trial courts, the nature of his claims are reviewable as timely

See App #9

September 15, 2017, the federal district court issued an "opinion and order granting respondent's motion to dismiss, dismissing the habeas petition and denying petitioner's motions to appoint counsel and to compel discovery". When addressing Brockman's subject matter jursdiction claims the district court held:

" All of petitioner's claims were discoverable with reasonable diligence before the statute of limitations began to run. Whether the state district court and circuit court had jurisdiction of petitioner's criminal case could have been discovered before trial..."

"... Thus, § 2244(d)(1)(D) is not a valid basis for delaying the start of the statute of limitations."

See App #10 at pp. 6-7 (dist. Ct. Denial of Petition)

The district court further ordered that a certificate of appealability is denied because reasonable jurists would not find it debatable whether the court's procedural ruling is correct. Slack v Mcdaniel 529 U.S., 473, 484 (2000). See App #10 at p. 13

Following the denial of his habeas petition. Brockman swiftly filed for a notice of appeal on October 4, 2017. And, subsequently, moved in the sixth circuit court of appeals requesting for a certificate of appealability on the following grounds:

1.

Petitioner Brockman asserts that a certificate of appealability should issue in his case because the district court erroneously applied the AEDPA's statute of limitations a claim processing rule to reject his challenges to the validity of his subject matter juridictional defect claims; grounds which are not subject to procedural ruling because they cannot be forfeited or waived and may be raised at any time

See App #11 at p. 8 (request for COA)

The sixth circuit court of appeals denied Brockman's request for a certificate of appealability on his subject matter jurisdiction arguments. In so doing, the court of appeals held:

"...As an initial matter, Brockman's argument that a jurisdictional challenge may never be dismissed as untimely lacks merits. See United States v Scruggs 691 F.3d 660, 666 (5th cir. 2012). And reasonable jurists would not debate the district court's determination that Brockman's habeas petition is untimely..."

See App #12 at p. 2 (U.S. Court of Appeals denial of COA)

Brockman now evoke the honorable U.S. Supreme Court to enforce the Sup. Ct. R. 10(c), under the circumstances of his case, because its apparently clear for the record that the sixth circuit court of appeals has decided an important federal question on his request for certificate of appealability in a way that conflicts with relevant decisions of this court as Brockman aruges at length below.

SUPREME COURT RULE 10

CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

Review on a writ of certiorari is not a matter of right, but judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the court's discretion, indicate the character of the reasons the court considers:

> (a) a united states court of appeals has entered a decision in conflict with the decision of another united states court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a states court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a united state court of appeals; or,
>
> (c) a state court or a united states court of appeals has decided an important question of federal law that has not been, but should be, settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court.

See Supreme Court Rule 10

OVERVIEW

At hand, petitioner Omar Brockman seeks preemptive relief against an judgment and order of the united states sixth circuit court of appeals, denying a certificate of appealability. Brockman relies on subrule (c) of the Supreme Court Rule 10, which, ideally deals with review of a decision, by a state court of last resort or by a federal circuit court of appeals of "an important question of federal law that has not been, but should be, settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court".

Properly comprehended, Brockman's position of Supreme Court Rule 10(c) as it relates to his question presented for certiorari review, evidence that he disagrees with the sixth circuit court of appeals order denying his certificate of appealability. He insist that the sixth circuit court of appeals decision affirming the district court's procedural rulings on his subject matter jurisdiction claims envince that the court of appeals decided an important federal question in a way that conflicts with relevant decisions of this court.

In addition, Brockman also claims that his certificate of appealability were incorrectly denied because, (1) his U.S. v Cotton 122 S.Ct 1781 subject matter jurisdiction claim satisfied the first component of the Slack v McDaniel 120 S.Ct 1595 test, i.e., to obtain a certificate of appealability (COA), in the event where the district court rejects a constitutional claim on a procedural ground, his petition at least, stated a valid claim of the denial of a constitutional right, and (2) likewise, satisfied the second element of Slack that jurists of reason could debate whether the district courts was correct in its procedural ruling, when it denied his subject matter jurisdiction claims on an procedural ground, which, U.S. v Cotton warn against.

ARGUMENT(S)

PETITIONER BROCKMAN BELIEVES THAT IT IS APPROPRIATE FOR THE U.S. SUPREME COURT TO GRANT CERTIORARI RELIEF IN ACCORDANCE WITH SUP. CT. R. 10(c) IN HIS CASE BECAUSE HE STRONGLY BELIEVES THAT THE SIXTH CIRCUIT COURT OF APPEALS DECISION AFFIRMING THE DISTRICT COURTS PROCEDURAL RULINGS ON HIS SUBJECT MATTER JURISDICTION CLAIMS RAISED IN HIS ORIGINAL HABEAS PETITION CLEARLY EVINCE THAT THE U.S. COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION ON HIS CERTIFICATE OF APPEALABILITY IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT IN U.S. V COITON TO WHICH REASONABLE JURISTS COULD HAVE FOUND THAT THE DISTRICT COURTS PROCEDURAL RULINGS ON HIS SUBJECT MATTER JURISDICTION CLAIMS DEBATABLE PERMITTING (COA) IN CONFORMITY WITH SLACK V MCDANIEL

Analysis & Assessment:

When a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after the effective date of the antiterrorism and effective death penalty act of 1996 (AEDPA), the right to appeal is governed by the certificate of appealability (COA) requirements found therein, regardless of whether the habeas petition was filed in the district court before or after AEDPA's effective date. 28 U.S.C. § 2253(c).

Under the antiterrorism and effective death penalty act of 1996 (AEDPA), an appellate case is "commenced", for purposes of determining the applicability of the AEDPA, when the application for a certificate of appealability (COA) is filed. 28 U.S.C. § 2253(c).

To obtain a certificate of appealability (COA), a habeas petitioner must make a substantial showing of the denial of a constitutional right, and that determination includes showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. 28 U.S.C. § 2253(c); Miller-El v Cockrell 537 U.S. 337, 123 S Ct. 1029, 1039 (2003) (quoting Slack v McDaniel 120 S Ct. 1595 (2000).

When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a certificate of appealability (COA) should issue, and an appeal of the district court's order may be taken, if the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack supra, at 1604.

Determining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding. § 2253 mandates that both showing be made before the court of appeals may entertain the appeal.

First Component of COA.

To satisfy the first component of § 2253 (c), Brockman must have , at least, shown that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.

Brockman sought COA in the sixth circuit court of appeals on two grounds raised in his petition for writ of habeas corpus. (1) A denial of due process in the states district court because it lacked subject matter jurisdiction in absence of a positive sworn complaint, and, (2) A denial of due process in the states trial court because it lacked subject matter jurisdiction in absence of a proper magistrate return, and in the absence of a filed felony information.

1. due process violation state district court lack of subject matter jurisdiction

At page 9 of Brockman's certificate of appealability request he provided more than sufficient showings of the denial of due process violation in the state district court- for lack of subject matter jurisdiction. See App # 11

Brockman explained that in Michigan if the felony complaint does not exhibit that it has been signed and sworn to by a complaining witness as required by the provision of Michigan Compiled Law (MCL) § 764.1. That the state district court lacked jurisdiction, and he provided ample authority to support his position to this extent. Michigan caselaw reads; "The positive sworn statement of a complaining witness conferred jurisdiction on the district court to conduct a preliminary examination and upon the trial court to conduct a trial of the defendant. See People v Schottey 66 Mich 708, 33 NW 810 (1887); People v Linscott 14 Mich App 334, 165 NW2d 514 (1968); People v Mosley 338 Mich 559, 61 NW2d 785 (1953); People v France 370 Mich 156, 121 NW2d 476 (1963); People v Berrill 391 Mich 124, 124 NW2d 823 (1974); People v Hernandez 41 Mich App 594, 200 NW2d 447 (1972); People v Collins 52 Mich App, 217 Nw2d 119 (1974).

At page 11 of his request for certificate of appealability Brockman advised the sixth circuit court that his felony complaint clearly does not establish that it has been signed and sworn to before a state magistrate judge as recommended by MCL § 764.1.

2. due process violation state trial court lack of subject matter jurisdiction

At page 11 of Brockman's request for a certificate of appealability he argued that his petition for writ of habeas corpus also stated a valid claim of the denial of a constitutional right in that the state trial court lacked

subject matter jurisdiction when it failed to comply with the requirements of Michigan Compiled Laws (MCL) §§§ 766.15; 767.1 and 767.40. See app # 11

Brockman argued that under Michigan law, immediately upon concluding the preliminary examination where a defendant is bound over for trial in the circuit court, the magistrate judge is required by statute to make a "proper return" to the circuit court where the defendant charged is bound to appear. Dinmers v Hillsdale Circuit Court 289 Mich 482, 486 (1939); Genessee County Prosecutor v Genessee Circuit Judge 391 Mich 115 (1974); People v Dunigan 409 Mich 765 (1980); MCL § 766.15(1)

Brockman further elucidated that if the magistrate's return is not filed with the trial court in conformity with MCL § 766.15, the Michigan caselaw holds that the prosecutor is estopped from proceeding forward with the case. People v Evans 72 Mich 367, 387-88, 40 NW 473 (1888). Moreover, until a proper return is certified and filed with the circuit court, the circuit court acquires no jurisdiction over the case, and no information can be filed in the circuit court. People v Fammilo 137 Mich App 378 (1984).

The Michigan Supreme Court ruled in People v goeck 457 Mich 442, 459 (1998), that "under Michigan Law, where no magistrate return was ever filed in the case for the circuit court (i.e., trial court) to acquire jurisdiction over the case, any subsequent conviction and sanctions must be set aside and a new trial ordered".

Michigan Compiled Law (MCL) § 767.1 reads;

> 767.1. The several circuit courts of this state, the recorders court and any court of record having jurisdiction of criminal causes, shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for crimes, misdemeanors and offenses, to issue writ and possess and do all other acts therein as they possess and may exercise in causes of like prosecutions upon indictments.

> And its counterpart 767.40 reads;
> 767.40. All informations shall be filed in the court having jurisdiction of the offenses specified in the information after the proper return is filed by the magistrate and by the prosecuting attorney of the county as informant. The information shall be subscribed by the prosecuting attorney or in his or her name by an assistance prosecuting attorney.

Brockman argued that in his case there exist no filing of a proper magistrate return as recommended by MCL 766.15. And neither are there a filing of the felony information as recommended by MCL 767.1 and 767.40. Therefore, he argues that the trial court clearly lacked its subject matter jurisdiction in his case.

Brockman clearly met his burden for purposes of COA in that his petition stated a valid claim of the denial of a constitutional right. As the Miller-El v Cockrell Court held, Brockman was not required to establish that he more than likely would have prevailed on the claims. However, as a general matter if Brockman's complaint, magistrate return and felony information was to lack the appearance of filing stamps as recommended by Michigan compiled Laws as set forth in their governed provisions. Brockman should have met his burden of establishing valid due process claim for purposes of granting a COA in the circuit court of appeals. Therefore, Brockman met the first component of the Slack test for COA.

Second Component of Slack COA Test

The second focal point of the Slack COA Test is directed at the district court's procedural holding. Slack supra at p.1604. To satisfy this aspect of the Slack test, Brockman must show that reasonable jurists would find that the district courts procedural rulings are debatable. Slack supra. id at 1604.

To satisfy the second point of the Slack test, at page 13 of his Brief in support of his motion for certificate of appealability Brockman argued that he in fact acknowledged that with the exception of his subject matter jurisdiction claims, the district court's procedural rulings explaining that he had failed to meet the statute of limitation under the AEDPA § 2244(d), were correct.

To this end, Brockman argued that ordinarily the antiterrorism and effective death penalty act (AEDPA) statute of limitation must be applied on a "claim -by-claim" basis as explained in Munchinski v Wilson 649 F.3d 308 (2012).

He furthered argued that the law is firm when it comes to questions of subject matter jurisdiction and the manner in which courts are required to resolve jurisdictional questions. At page 14 of his Brief in support of his motion for certificate of appealability, Brockman went on to argue that the United States Supreme Court held that, "subject matter jurisdiction" properly comprehended, refers to a tribunal's power to hear a case, " a matter that can never be forfeited or waived". Consequently, defects in subject matter jurisdiction require correction regardless of whether the error was raised in a lower court. Union Pac. R.R. v Bhd. of Locomotive Eng'rs & Trainmen Gen. Comn 558 U.S. 67, 130 S.Ct 584 (2009); Arbaugh v Y & H Corp. Supra (citing United States v Cotton 122 S.Ct 1781 (2002).

When the district court denied Brockman's subject matter jurisidiction claims for failure to meet the AEDPA's Statute of limitations it held:

> All of petitioner's claims were discoverable with reasonable diligence before the statute of limitations began to run. Whether the state district court and circuit court had jurisdiction of petitioner's criminal case could have been discovered before trial... Thus, § 2244(d)(1)(D) is not a valid basis for delaying the start of the statute of limitations.
>
> See App # 10 (Fed. Dist. Ct. Order Denying Petition)

Clearly the district court's procedural holdings could be reasonably debated by reasonable jurists because the district courts procedural rulings clearly conflicts with the United States Supreme Court Holdings in Cotton. Cotton explained that questions of subject matter jurisdictional defects cannot be forfeited or waived, and require correction regardless if the claim was raised in a lower court. Cotton Supra. at p. 1785.

In his certificate of appealability Brockman asked a split question:

1). Since questions of jurisdictional defects can never be forfeited or waived does a court err in applying and rejecting a jurisdictional question on the basis of a procedural rule alone?

2). If so, did the district court in this instant case wrongly apply the AEDPA's statute of limitation rule under 28 U.S.C. § 2244(d) to petitioner Brockman's jurisdictional questions presented in his habeas petition?

When faced with these quesions the sixth circuit court of appeals held in their order denying Brockman's certificate of appealability that:

> As an initial matter, Brockman's argument that a jurisdictional challenge may never be dismissed as untimely lacks merits. See United States v Scruggs 691 F.3d 660, 666 & n.13 (5th Cir. 2012). And reasonable jurists would not debate the district court's determination that Brockman's petition is untimely... Under 28 U.S.C. § 2244(d)(1).
>
> See App # 12 (Sixth Cir. COA.Order Denying COA)

Brockman's Entitlement to Cert. Under Rule 10(c).

"Supreme Court Rule 10(c) deals with review of a decision by the Federal circuit court which has decided an important federal question in a way that conflicts with relevant decisions of this court".

Brockman has provided clear proofs that in his motion for a certificate of appealability, he asked the sixth circuit court of appeals to resolve an erroneous decision rendered by the Michigan Eastern district court on his

violations of due process- constitutional infirmities which arose from his state court proceedings when the state courts lacked their statutory subject matter jurisdiction, for having failed to adhere with the statutory provisions which conferred jurisdiction.

And the sixth circuit court of appeals order denying Brockman's COA explicitly reflect that the federal circuit court decided these important federal questions in a way that conflcits with the relevant decisions of this court [Supreme Court] in Slack v McDaniel 529 U.S. 473, 484 (2000), and in United States v Cotton 122 S.Ct 1781 (2002). When the sixth circuit court of appeals held that the federal district court's procedural rulings denying Brockman's subject matter jurisdiction claim for having failed to meet the statute of limitations under 28 U.S.C. § 2244(d), could not be debated by reasonable jurists.

The United States Supreme Court are The National Expounder of Federal Law

The Supreme Court of the United States is the national and paramount expounder of federal law. All courts of this nation owe allegiance to the court's [Supreme] decisions on federal issues. The Supreme Court is the tribunal to establish equal justice for all, and it does this mainly through its power to review lower court judgments.

The Supreme Court is obliged to resolve conflict that arise when a state or federal court renders a decision that departs from the court's own decisions. With this in mind in the context of the case at hand. Brockman's subject matter jurisdiction claims were rejected by the district court on a statute of limitation procedural bar for having failed to meet the 1 year time period of 28 U.S.C. § 2244(d).

Therefore, Brockman properly recognized that Slack v McDaniel governed his Certificate of appealability review and referred those principle to the sixth circuit court of appeals. Its clear that he meet the requirements of the Slack test as explained here.

Because Brockman raised the questions of subject matter jurisdiction in his habeas petition. Brockman also properly argued that his constitutional claim were govern by United States v Cotton, and correctly applied those principles to his jurisdictional arguments.

Cotton held that the term"jursidiction" means "the courts statutory or constitutional power to adjudicate the case" Steel Co. v Citizens for Better Environment 523 U.S. 83, 89 (1908). Brockman demonstrated viable arguments that the state courts statutory jurisdiction were indeed questionable.

Therefore, Brockman has satisfied his burden that Supreme Court Rule 10(c) may be appropiately invoked by this court [Supreme Court] to rectify the sixth circuit court of appeals denial of his request for a certificate of appealability on his questions of whether or not his habeas petition was wrongly denied on those grounds by the federal district court for having failed to meet the statute of limitations under 28 U.S.C. § 2244(d), notwithstanding the holdings of this court in United States v Cotton 122 S.Ct 1781 warning against such findings.

Supreme Court Independent Review

Aside from everything expressed in Brockman's petition for writ of certiorari. As an independent matter, this court [Supreme Court] has repeatedly held that:

> Subject matter jurisdiction exists, even in the absence of a challenge from any party "subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived". United states v Cotton 535 U.S. 632 (2002). Moreover, courts, including the U.S. Supreme Court, have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party. Ruhrgas AG v Marathon

Oil Co., 526 U.S. 574, 583, 119 S.Ct 1563 (1999). See Arbaugh v Y & H Corp., 546 U.S. 500, 126 S.Ct 1235 (2006).

Since the courts opinion in Arbaugh, the Supreme Court has not made any rulings to suggest that its opinion in Arbaugh has been eroded. Hence, according to Ruhrgas AG Supra, This court should exercise an independent review of whether the state courts in fact are divest of its statutory subject matter jurisdiction as proffered by Brockman.

CONCLUSIONS AND RELIEF REQUESTED

WHEREFORE, Petitioner Brockman remain tenacious in his faith that this court will observe that he has met the requirments of Sup. Ct. R. 10(c), and accordingly, grant him certiorari relief on his question presented for review, or reverse the sixth circuit court of appeals order denying him COA with direction that the court of appeals review the merits of Brockman's Subject matter jurisdiction arguments. Or, that this court will exercise its own independent review of Brockman's merits since they questions the subject matter jurisdiction of the state courts.

Respectfully Submitted,

Dated: May 10th, 2018

Omar Brockman

Petitioner in Pro se
Omar Odale Brockman #401131
Muskegon Correctional Facility
2400 S. Sheridan Drive
Muskegon, Michigan 49442