

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN PHILLIP BENDER-PETITIONER

vs.

LORIE DAVIS, DIRECTOR-RESPONDENT

MOTION FOR RECONSIDERATION, RULE 44

TO THE HONORABLE JUSTICE ALITO:

The petitioner asks for reconsideration of his petition for a writ of certiorari because of intervening circumstances of a substantial or controlling effect, Rule 44.2, to wit: Respondent, division of Texas, through counsel, after the filing of the petition, on October 16, 2018, filed a general written waiver, without reserving limitations, the first and only filing by the Respondent in this matter. The whole focus of the petition is that proceedings in the district court have been in the nature of inquisition rather than party presentation. Petitioner now seeks to enforce waiver against Respondent to the full extent allowed by law and equity, removing any bar to review.

Has the privilege of federal habeas and equal access to the Great Writ been suspended by the application of 28 U.S.C. §§ 2253, 2244(d)(1) in this case, in violation of U.S. Const: Art. I, §9, cl.2, Amends. IV, V, VI, XIV? The petition shows a first 28 U.S.C. §2254(a) application was filed based on actual innocence and legitimate showing of Constitutional violations.

The rationale in Congressional legislature history for the restraint of the Great Writ justifying expedited disposition by inquisition, is wholly lacking in this case. There has been no second/successive petition in state or federal courts, the sentence is being executed, petitioner is in prison, and this is not a death penalty case. Congress has designated a procedure granting equal access to address grievances. Although response is not required unless ordered, screening dismissal by inquisition for limitations should not be allowed to stand to deny equal access, and the petitioner has demonstrated timeliness with no response.

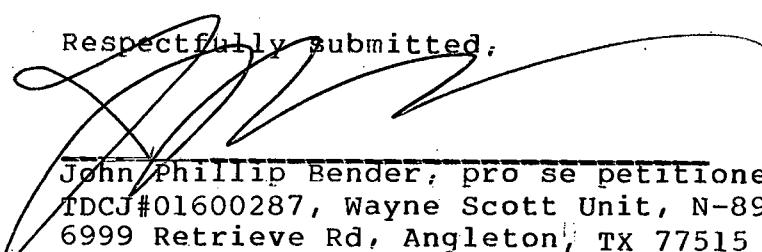
See Rules 4, 5, Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules")

The Court limits authority for such dismissals to preserve the writ, and the 3 cases cited, petition at 12 (Wood, Day, Granberry) distinguish between forfeiture and waiver, and modest exception for dismissal by inquisition, cannot override waiver. Respondent forfeited limitations and then filed a general waiver, all three cases recognizing waiver on appeal applied equally to the parties. Although 28 U.S.C. §2254(b)(3) requires express waiver of the exhaustion requirement, there is no such corresponding provision for 28 U.S.C. §2244(d)(1), and a general waiver will suffice, an express waiver, Rule 15.5, Respondent's only filing in any court. Applicant asks for reconsideration strictly applying waiver against Respondent to the full extent of law and equity.

Denial of the right to have grievances heard, or even before the Court, is one of the worst types of governmental oppression

and one of the primary reasons for the Magna Carta and the Declaration of Independence, as you well know. Florida v. Meyers, 466 U.S. 380, 385, 104 S.Ct. 1852, 80 L.Ed.2d 381 (1984)(Stevens, J., dissenting), suggests the whole purpose of the unique creation of life-tenured federal judiciary was to ensure that certain rights are fairly secured against possible oppression by federal or state governments. All this becomes meaningless without the Great Writ and this Court is a last safeguard from a reversion to King John or King George.

Respectfully submitted,

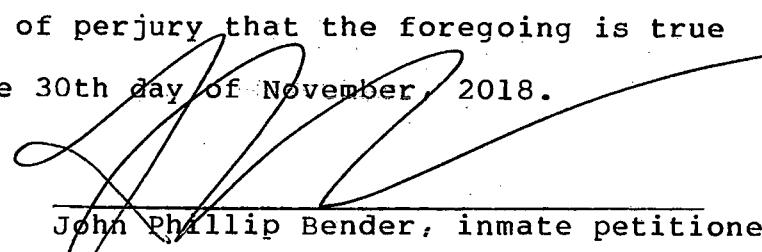

John Phillip Bender, pro se petitioner
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PROOF OF SERVICE

By my signature above I certify that on the 30th day of November, 2018, a true and correct copy of petitioner's Motion for Leave to Proceed In Forma Pauperis and Motion for Reconsideration, Rule 44, were served on opposing counsel by mail, deposit in the Wayne Scott Unit mail system for legal mail, addressed to: Attorney General of Texas, Attn: Joseph P. Corcoran, P.O. Box 12548, Austin, TX 78711-2548.

UNSWORN DECLARATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 30th day of November, 2018.


John Phillip Bender, inmate petitioner

**Additional material
from this filing is
available in the
Clerk's Office.**