No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 2018

In re WILLIE TRIPLETT —Petitioner

VS

DARREL VANNOY —Respondent

ON PETITION FOR CERTIORARI TO
UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

PETITION FOR CERTIORARI

_____
Date Certiorari Granted Or Postponed

Willie Triplett
Willie Triplett Pro se #100388
Louisiana State Penitentiary
Oak-2, General Delivery
Angola, LA. 70712

QUESTION PRESENTED

I. Whether Lower Court's denial of Motion for Reconsideration pursuant to Rule 60(b)(6) based on intervening law was an abuse of discretion that conflicts with decisions of U.S. Supreme Court and deprives Petitioner of constitutional right under 14th Amendment to due process of law.

II. Where State allows Petitioner Pro se, to raise IATC claim on direct appeal, where Constitutional right to counsel, fails to resolve issue, and provides no counsel at initial-review collateral creates a State created impediment that deprives of counsel assistance before the Courts in violation of due process of law under, U.S. Const., Amendment 6, 14. *Critchley v. Thaler*, 586 F.3d 318, (5th Cir. Oct. 21, 2009); *Soffna v. U.S.* 709 F.2d 160 (2nd Cir. (N.Y.) 1983)

III. Whether indigent forced to proceed Pro se on direct appeal with IATC claim (Patent on Face of Record), and court fails to appoint counsel at initial-review collateral on claim of IATC deprives of due process and equal protection of the law. U.S. Const., Amends 6, 14.

IV. The U.S. Middle District Court, and the U.S. 5th Circuit of Louisiana has entered decisions applying 28 U.S.C., § 2244 to a Pro se, Rule 60(b)(6), needing this Court's exercise of Supervisory Authority to decide matter.

V. This Court's Supervisory Authority needed to determine whether Lower Court's recharacterization of Pro se Rule 60(b)(6) motion to a habeas corpus without prior notice and opportunity to amend is an abuse of discretion denying Constitutional right to due process of law.

VI. This case involves the important issue of whether when State fails to complete the court with the Six Amendment clause of appointment of counsel for indigent defendants, State creates an impediment constituting extraordinary circumstances sufficient to proceed under Rule 60(b)(6)?

VII. The Court's Supervisory Authority needed to answer important federal question whether a defendant preserves right to counsel at initial-review collateral when he raised IATC claim on direct appeal that was unresolved? U.S. Const., Amend. 6th, 14th.

VIII. This Courts Supervisory Authority needed to establish uniformity in Lower Court's application of § 2254 successive petition standard to a, Rule 60(b)(6) that challenges a prior habeas proceedings integrity because of a structural defect, subjecting Petitioner to denial of due process under, U.S. Const., Amend.'s 6, 14th.

IX. Movant's Substantial Showing Trial Counsel's Cumulative Errors Rendered Actual Objective Deficient Performance That Prejudiced Movant By Denial Of A Fair Trial, And There Is A Reasonable Probability But For Counsel's Deficient

Performance The Results Of The Proceeding Would Have Been Different. *Martinez, supra; Strickland v. Washington*, 466 U.S. 688, 687, 104 S.Ct. 2052, 2064. 80 L.Ed.2d 674 (1984)

X. Substantial showing of IATC under *Martinez* does not raise new claim as Lower Court's suggest, deprives of merits ruling in violation of due process of law under 14th Amendment.

XI. Lower Courts denial of COA, IFP, with memorandum in support on IATC is an abuse of discretion that deprives Petitioner of due process of law under, U.S. Const., Amend. 14; 28 USC, § 2253 (c).

LIST OF PARTIES

All parties appear in the caption of the case on the cover pate.

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IN THE HONORABLE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

No:_____

In re: WILLIE TRIPLETT
Petitioner

-against-

DARREL VANNOY, WARDEN,
LOUISIANA STATE PENITENTIARY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X] **For cases from Federal Courts:**
The opinion of the United States Court of Appeals appears at Appendix [P]to the petition and is:
[X] reported at **Triplett v. Cain, No. 03-30952;** or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix [H & H3]to the petition and is:
[X] reported at **Triplett v. Cain, No. 02-770-D-1** or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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:

[X] reported at State v. Triplett, 97-0601 (La. App. 1st Cir. 6/29/98); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the 19th JDC, Triplett v. Cain court appears at Appendix [E1 & K] to the petition and is:
[X] reported at 06-94-980 (9-13-00)(8-3-12); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] **For cases from Federal Courts:**

The date on which the United States court of Appeals decided my case was March 2, 2018, Case No. 17-30100
[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by he United States Court of Appeals on the following date: April 18, 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)

[X] **For cases from State Courts:**

The date on which the highest state court decided my case was May 31, 2013, Case No. 2013-KH-0038; Case No. 2012 KW-1662.

A copy of that decision appears at Appendix [L].

[X] A timely petition for rehearing was thereafter denied on the following date: August 30, 2013, and a copy of the order denying rehearing appears at Appendix [M].

[ ] 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)

JURISDICTIONAL STATEMENT

This case Willie Triplett v. Darrel Vannoy, Case No. 17-30100 (U.S. 5th Cir., 2018), initial filing involves Petitioner's Rule 60(b)(6) Motion for Relief from prior habeas corpus based on Supreme Court's equitable Ruling of ***Martinez v. Ryan***, 132 S.Ct. 1309 (March 20, 2012), and *Trevino v. Thaler*, 133 S.Ct. 1911, (May 23, 2013), coupled with the unusual and extraordinary circumstances of no counsel at, appeal or initial-review collateral on a claim of Ineffective Assistance of Trial Counsel[1] (IATC, hereafter). [App. Q]. Magistrate Judge recharacterized motion as successive habeas corpus and recommended transferred to U.S. 5th Circuit for authorization [App.[2] R]

The Petitioner filed objection, [App. S]. District Court issued order for transfer, [App. T]. The Petitioner filed Motion for Authorization [App. U]. This motion was denied by the U.S. 5th Circuit as not meeting standard for a second petition under AEDPA, May 14, 2014. [App. V].

On December 27, 2016, Petitioner file for reconsideration of denial of Rule 60(b)(6) relief from prior habeas corpus and transfer for authorization, based on intervening change in 5th Circuit's law announced in *Coleman v. Goodwin*, 833 F.3d 537 (5th Cir. Aug. 15, 2016), extending the *Martinez/Trevino* Rule to Louisiana prisoners, and the unusual and extraordinary circumstances of a structural defect of no counsel on IATC. [App. W].

District Court dismissed petition. [App. B]. The Petitioner filed Notice of Appeal, [App. BB]. The Petitioner also filed Motion to Proceed Informa Pauperis (IFP),[3] Application for Certificate of Appealability (COA),[4] and, memorandum in support. [App. B3].

All was denied by 5th Circuit, March 2, 2018. [App. A]. The Petitioner filed for Reconsideration en ban March 15, 2018. [App. A1]. On March 13, 2018, March 19, 2018, court gave Petitioner ten (10) days to correct deficiency in petition for Rehearing en banc. [App. A2]. On March 28, 2018, Petitioner

1 IATC - Ineffective Assistance of Trial Counsel
2 App. - hereafter.
3 IFP - Informa Pauperis
4 COA (Certificate of Appealability).

complied with the Court's request. [App. A3]. This petition for certiorari is being timely filed on July 13, 2018. by being placed in security possession for mailing with proper postage affixed. The Courts Jurisdiction is conferred pursuant to, 28 U.S.C., § 1254 (1); Federal Rule of Civil Procedure, Rule 60(b)(6).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V. VI. and XIV to the United States Constitution. which provides:

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the and or naval forces, or in the Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private private property be taken for public use, without just compensation.

Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV:

> 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 the law; nor deny to any person within its Jurisdiction the equal protection of the laws.
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendments is enforced by Title 42, Section 183, United States Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State, Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the Jurisdiction

thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This case originated from June 4, 1994, arrest after Petitioner and alleged victim were caught in restrooms in the Baton Rouge, Louisiana City Park attempting to engage in consensual sex acts. The Petitioner went to door of restroom and was confronted by Baton Rouge City Police Officer Joseph R. Williams who handcuffed Petitioner and placed him in squad car. The alleged victim later exited the restroom and talked with officer out of a distance Petitioner could not hear what was being said. Officer returned to squad car and charged Petitioner with Aggravated Rape which Petitioner denied. Officer responded "She probably won't come to court."

After over two years elapsed, the Petitioner was brought to trial. October 28, 1996, however, with six white and six black jurors sworn and impaneled a mistrial was declared because of prosecutor's prejudicial remarks concerning the Petitioner may or may not have given testimony before the grand jury. [App. H1, p.3]. Trial counsel motioned the Court for dismissal based on prosecutorial misconduct, and the trial court found prosecutor's prejudicial remarks were intentional, nevertheless denied motion for dismissal base on prosecutor misconduct, and proceeded to declare a mistrial without Petitioner's consent, October 29, 1996. [App. H1, Mistrial, p. 9, Lines 1-4; p. 10, Lns. 29-30]. On October 30, 1996, the second trial began with a jury chosen of eleven(11) whites, and one(1) black which returned a verdict of guilty of Aggravated Rape 11 to 1. Upon Appellate Counsel filing only one claim out of the many he was asked to raise ineffective assistance of trial counsel (IATC). However, Appellate counsel "Fredrick Kroenke" refused to do so, forcing Petitioner to file a Pro se Supplemental Brief raising among other claims IATC. However, appeal was conditionally denied, *State v. Triplett*, Case No.97-0601, (La. 1st Cir. June 29, 1998) (Unpublished).

All claims were resolved except four claims of prejudice to a speedy trial and claims of IATC 1, 2, 5-7 and 9, with court ultimately holding:

> "Only in an evidentiary hearing in the district court where defendant could present evidence from outside record, could these allegations be sufficiently investigated." [App. D. p. 12].

The Petitioner was denied relief by both State and federal Courts, where State Commissioner "Allen Bergeron" on first post-conviction relief (PCR) at initial-review collateral on claim of IATC, cited standard under ***Strickland v. Washington***, and unreasonably applied the standard to facts presented in Petitioner's Trial proceeding that were clearly contrary to ***Strickland, supra,*** in violation of 28 USC § 2254(d)(1)(2); (e)(2). This done by Commissioner without holding an evidentiary hearing[5]. (E.H.) or appointing counsel assistance in defending claim of IATC. [Commissioner's Recomm., September 13, 2000, App. E1]. (Petitioner objections to Commissioner's R&R, Sept. 2000) [App. H2]

The Federal District Court gave an undeserving deference to State initial-review collateral holding "no need for an "EH"" while procedurally barring claims of unconstitutional jury instruction on reasonable doubt, discriminatory grand jury foreman selection process, and a defective Bill of Indictment whereby Petitioner was prejudiced before jurors. [Mag. Judge's R & R., U.S. Mid. Dist. of La, August 12, 2003.App. H]. On, October 4, 2013, Petitioner filed Rule 60(b)(6) motion into the U.S. Middle District which re-characterized as second or successive petition needing authorization from the 5th Circuit. [App. R]. The Petitioner filed "Objection & Traversed," [Pet. Obj. to Mag's R & R, January 23, 2014, February 10, 2014, App. S]. The district court adopted the Magistrate's Recommendation. [U.S. Mid. District's "Order", App. T]. Petitioner filed motion for authorization, [Petitioner's motion for authorization to 5th Circuit, App. U], but was denied, [5th Cir., denial of authorization, May 14, 2014, App. V].

On December 27, 2016, Petitioner filed "Motion for Reconsideration of Motion for Relief from judgment denying Rule 60(b)(6)(D)(1) and transfer to U.S. 5th Circuit to seek authorization." [App. W]. The Court rejected documents for filing due in part to failure to mail for screening. [U.S. Dist. Ct. Judge

5 Evidentiary Hear, hereinafter, E.H.

James J. Brady, "Order" January 9, 2017, App. B]. Petitioner filed Notice of Appeal, January 17, 17, App BB]. Thereafter, Petitioner filed motion to proceed IFP, application for COA, but was denied by district court. [App. B1]. Thereafter, Petitioner filed Notice of Appeal, followed with a motion to proceed IFP on appeal with affidavit, application for COA with memorandum in support [App. B3]. The Court denied all, March 2, 2018, [App. A]. Petitioner filed timely motion for rehearing en banc, but denied April 18, 2018. [App. C]. This petition for certiorari is being timely filed this July 13, 2018.

PROCEDURAL HISTORY

A. Course of State Court Proceedings:

Petitioner, Willie Triplett, was convicted in the 19th Judicial District Court "11 to 1" jury verdict of Aggravated Rape, October 31, 1996, and sentenced to life without benefit of probation, parole or suspension of sentence. An appeal was taken but conviction and sentence was conditionally affirmed as to all claims with the exception to prejudice due to delays to trial, and IATC which Court held was not subject to appellate review and would require a full blown E.H. where Petitioner could present evidence from outside the record. [App. D pp.5 12]. Certiorari to Louisiana Supreme Court denied. *State v. Triplett*, Case No. 98-KO-2519 (La. Jan. 8, 1999). Petitioner also sought direct review of certiorari to U.S. Supreme Court but was denied. *Willie Triplett v. State of Louisiana*, Case No. 98-8793 (U.S. Sup. Ct., June 7, 1999).

Petitioner thereafter filed application for post-conviction relief (PCR)[5] on August 31, 1999. [App. E]. The Petitioner alleged several claims for relief among which IATC and ineffective assistance of appellate Counsel. Commissioner recommended denial of relief without appointing counsel or held evidentiary hearing on claim of IATC. [App. E1]. Application denied by 19th Judicial District Court. (19th JDC "Judgment" 10/06/00, App. F). Supervisory writ (*Triplett v. State*, Case No. 200-KW-2718 denied, (La. 1st Cir. Ct. App., April 19, 2001)). Certiorari to Louisiana Supreme Court was denied. (*Triplett v. State*, Case No. 2001-KH-1436 (La. Feb. 8, 2002)).

5 PCR - Post-Conviction Relief.

On May 11, 2010, Petitioner filed second application for PCR based on New Rule announced in *Melendez Diaz v. Mass, supra.*, and supplemented argument with *Martinez v. Ryan, supra,* arguing State failed to conduct "E.H." or appoint counsel at initial-review collateral on IATC claim shifted from direct appeal unresolved. [App. I, p.4] Commissioner "John M. Smart: ordered District Attorney to respond in 30 days. May 12, 2011. [App. J]. Petitioner's response to State's objections [App. J1]. Commissioner "Quintillis K. Lawrence" recommendation to deny PCR, Aug. 03, 2012 [App. K]. The Petitioner traversed commissioner's recommendation, August 15, 2012, [App. K1]. The application, *Triplett v. Cain*, No. 06-94-0980, was denied, (19th JDC "Judgment" Sept. 10, 2012). Application for Supervisory Writ, No. 2012-KW-1662, was den. (La. 1st Cir., Dec. 03, 2012). Certiorari to Louisiana Supreme Court sough, *State v. Triplett*, No.2013-KH-38, but denied, (La. May. 31, 2013). [App. L]. Application for rehearing, No. 2013-KH-38, but den., August 30, 2013. [App. M]. Petitioner on July 7, 2013, Motioned for Leave of Court to Amend and Supplement application for certiorari with *Trevino v. Thaler, supra,* and *McQuiggin v. Perkins, supra.* [App. N].

B. Course of Proceedings in Federal Court

1. After exhausting direct appeal and PCR, Petitioner joined all claims in an application for Federal habeas corpus, including the new evidence presented to the State Court of the affidavit of one witness "Henry Harris" who wanted to come testify at Petitioner's trial. [App, X3]; *Willie Triplett v. Burl Cain*. No. 02-770-D-M1. but was denied. (U.S. Mid. Dist. Cr..Sept. 8. 03). [App G]. Petitioner then filed application for COA with District Court but was denied, No. 02-770-D1 (Mid. Dist. of La.,Oct.2, 2003). [App. O]. Petitioner then sought COA from U.S. 5th Circuit, but was denied, Case No. 03-30952 (5th Cir., Feb. 12, 2004; rehearing denied, Mar. 23, 2004). [App. P.]. Sought certiorari before U.S. Supreme Court, Case No. 03-11032, denied. (Sup. Ct., Oct. 4, 2004]. [App. P1].

2. After exhausting second PCR claims with State courts, the Petitioner filed a Rule 60(b)(6)[6] Motion into U.S. Middle District Court of Louisiana asking for relief from judgment denying habeas

* Has since been disbarred.

6 Federal Rule of Civil Procedure, herein after Rule 60(b)(6).

corpus September 4, 8, 16, 2003. Case No. 02-770-JJB-SC.R. [App Q]. The District Court re-characterized Petitioner's Rule 60(b)(6) Motion as a Second/Successive petition in part and gave recommendation to seek authorization from 5th Circuit. Petitioner filed objections. Judge James Brady adopted Magistrate's recommendation and ordered transfer. Petitioner then sought Authorization, but was denied, *In re: Willie Triplett, Jr.*, Case No. 14-30128 (5th Cir., May 14, 2014).

On December 27, 2016, Petitioner filed Motion for Reconsideration of Relief from Judgment denying Rule 60(b)(6)(D)(1) and transfer to 5th Circuit for Authorization. Said motion based on intervening change in U.S. Supreme Court and U.S. 5th Circuit's Law. *Martinez/Trevino*, and *Coleman v. Goodwin*, 833 F.3d 537 (5th Cir. Aug. 15, 2016). [Mo. for Relief from Judgment, App. W].

On January 9, 2017, U.S. District Judge Ok'ed clerk's rejection of Petitioner's documents based on not properly mailed for screening (of which Petitioner thought was a denial). Petitioner filed Notice of Appeal. [App. BB]. On March 30, 2017, Judge Brady issued order denying motions for COA, IFP. [App. B1]. On May 2, 2017, Court granted extension of time to May 25, 2017, to correct deficiencies [App. B2]. Petitioner filed Notice of Appeal on May 23, 2017, and Motions to Proceed IFP with Affidavit in support, with a memorandum of law in support of Motions to Proceed IFP and for grant of a COA. [App B3]. *Willie Triplett v. Darrel Vannoy*, Case No. 17-30100 (5th Cir. May 23, 2017).

The U.S. 5th Cir. on March 2, 2018, denied relief and held Petitioner had raised a new claim and therefore a successive § 2254 needing Authorization.* The Court also held "Petitioner conclude that the district court abused its discretion in ordering that petitioners Motion for Relief from Judgment not be filed, and cited," *Hernandez v. Thaler*, 63 F.3d 420, 428 (5th Cir. 2011), and denied COA, IFP status. [App A]. On March 15, 2018, Petitioner filed a timely Motion for Rehearing en banc. [App. A1]. On March 13 and 19, 2018, Court gave Petitioner ten days to correct deficiencies. [App. A2]. On March 28, 2018,

* Because the 5th Circuit holding failed to mention or present any factual findings of what claim it thought was new, Petitioner presented the following writs applications to show he has presented no new claim: First PCR App. D; second PCR, App. I; Mag. Reports, App. H, R; Pet. Traverse, App. K; Pet. § 2254, App. G; Rule 60(b)(6) Mo. for Relief from Judgment, App. Q; Mo. for Reconsideration of Rule 60(b)(6), App. W; Pros Supplemental Brief on direct appeal, [App. Y2).

Petitioner resubmitted "Motion for Leave to Amend and Supplement" Motion for Rehearing en banc. (Case No. 17-30100, 5th Cir., March 28, 2018), [App. A3]. On April 18, 2018, 5th Circuit denied en banc hearing. [App. C]. This petition is being mailed this 13th day of July 2018. The Court has Jurisdiction pursuant to 28 U.S.C., § 1254(1).

REASON FOR GRANTING CERTIORARI NO. I.

I. Whether Lower Court's denial of Motion for Reconsideration pursuant to Rule 60(b)(6) based on intervening law was an abuse of discretion that conflicts with decisions of this Court and deprives Petitioner of constitutional right under 14th Amendment to due process of law.

In the instant case, the Petitioner raised (IATC) claim on direct appeal, Pro se, in a Supplemental Brief after court appointed counsel refused to do so after being asked to raise an obvious IATC patent on face of the record. The Louisiana First Circuit ruled claim was not subject to Appellate review leaving claim unresolved in part. The law of the case from the First Circuit entitled Petitioner to an(E.H.) with the appointment of counsel at the initial review collateral on a claim of IATC (App. D, pp. 2, 5, 11-12).

The State of Louisiana allows a defendant to raise IATC claim on direct appeal where he has Constitutional right to counsel. *State v. Moody*, 779 So.2d 4 (La. 1st Cir. 12/22/00); *State v. Williams*, 632 So.2d 3511 (La. 1st Cir. 1993). The Petitioner's trial counsel failed to conduct pretrial investigation where he showed up for trial with seriously flawed defense of representing Petitioner against the wrong person, [App. D2].. Nor did he consult with Petitioner to develop trial strategy, all to the prejudice of Petitioner constituting deficient performance which will be explained in the Petitioner's "**Substantial Showing of IATC**" under *Martinez v. Ryan supra.*

The Petitioner was entitled to effective representation at the initial-review collateral based on the 1st Circuit's conditional ruling on direct appeal, (App. D), and Louisiana Code of Criminal Procedure, art 930.7. Right to Counsel:

A. If the Petitioner is indigent and alleges a claim which, if established, would entitle him to relief, the Court may appoint counsel.

B. . . .or when the Court orders an evidentiary hearing

C. The Court shall appoint counsel for an indigent when it orders an evidentiary hearing on

the merits of a claim. . .

(LSA-La. C. Cr. P. art. 930.7.) [App. Z).

Moreover, Louisiana Constitution grants the right to counsel:

> "When any person has been arrested. ..he has right to the assistance of counsel, and if indigent, his right to court appointed counsel. . .at each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the Court if he is indigent and charged with an offense punishable by imprisonment. . ."

(LA. Const., Art. I § 13.) [App. Z1).

Louisiana's law is only a reflection of America's Constitutional mandate that confers the right to counsel:

> "In all criminal prosecutions the accused shall enjoy. . .the assistance of counsel for his defense."

(U.S. Const., Amend VI) [App. Z2).

The Petitioner was deprived of this right in that his trial counsel was ineffective under ***Strickland*** whereby he was prejudiced and denied a fair trial whose results are unreliable. Id. The appellate counsel who failed to raise the IATC claim also proved to be ineffective in the one claim of speedy trial violation raised without arguing the issue of prejudice, and suggesting Petitioner and alleged victim were caught in intercourse when there was none. (Frederick Kroenke's appellate brief, July 28, 1997) [App. D1, p.3, Line 8]. Petitioner never stated they were engaged in intercourse. Fundamental fairness, the Court has determined entitled the Petitioner to Effective Assistance of Counsel at the initial-review collateral on an IATC claim. This Court in ***Martinez*** held:

> "An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures. And obtain a fair adjudication on the merits of his claim."

Martinez, 132 S.Ct., at 1317.

In the instant case, Petitioner had no representation of counsel at the initial-review collateral on IATC. The reviewing courts made light of the fact appellate counsel did not raise claim of IATC, but Petitioner did. [Comm.'s "Berqeron's" Recomm. Sept. 13, 00.) [App. E1, p.4, Lines 26-27]. And, U.S. Magistrate Judge Riedlinger followed suit in his R & R, August 12, 03, [App. H, p.38, Lines 3-6]. *Martinez* held:

> "To present a claim of IATC in accordance with State's procedures, a prisoner likely needs an effective attorney. The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding . . . While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of Ineffective Assistance, which often turns on evidence outside the trial record." Id., at 1317.

Martinez further held that when a State requires a prisoner to raise an IATC claim in a collateral proceeding, a prisoner may establish cause for a default of an IATC claim in two circumstances:

> The first is where the State courts did not appoint counsel in the initial-review collateral proceeding for a claim of IATC. The Second is where appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standard of *Strickland v. Washington*, 466 U.S. 688, 687 (1984): *Martinez*. 132 S.Ct. at 1312.

Because Petitioner was without counsel at initial-review collateral, *Martinez* entitles him to a remand to have his claims of IATC reviewed on the merits with the appointment of counsel by the Court for Petitioner who is indigent. For this relief he continues to pray.

> This question is of substantial importance to public and judiciary where defendants challenge structural defect of no counsel representation on IATC first heard, pursuant to Rule 60(b), the Court re-characterizes as second petition.

REASON FOR GRANTING CERTIORARI NO. II.

> II. Where State allows Petitioner to raise IATC claim on direct appeal, where Constitutional right to counsel, fails to resolve issue, and provides no counsel at initial-review collateral creates a State created impediment that deprives of counsel assistance before the Courts in violation of due process of law under, U.S. Const., Amends 6, 14. *Critchley v. Thaler*, 586 F.3d 318, (5th Cir. Oct. 21, 2009); *Solina v. U.S.* 709 F.2d 160 (2nd Cir. (N.Y.) 1983)

The issue presented needs this Court's Supervisory Authority to determine whether Petitioner's claim of IATC is required to be statutorily or equitable tolled until the State created impediment of failure

to appoint counsel on a claim of IATC is removed, and whether the Middle District Court abused its discretion when it denied Petitioner's motion for relief from judgment under Rule 60(b)(6), deferring to State Court's factual finding where there was no full and fair hearing by appointment of counsel at initial-review collateral and holding an (E.H.), violates the Petitioner's right under United States Constitutional Amendment 14th equal protection and due process law.

"CAUSE AND PREJUDICE"

The absence of counsel creates cause why Petitioner raised his IATC claim in a procedurally improper manner whereby he was prejudiced. Petitioner's Federal ground for relief is he received IATC. He relies on State's failure to appoint counsel at initial-review collateral as cause to excuse his failure to comply with Louisiana's Procedural Rule. Where there is no lack of diligence, this cause and prejudice allows a Federal Court to hold an "E.H." with court appointed counsel to consider the merits of IATC and/or procedurally defaulted claims of jury instruction on reasonable doubt, Ineffective Assistance of Trial Counsel [App. H, pp. 30-32]; other crimes evidence where trial counsel failed to object [App. H, pp. 16-17]; trial counsel failed to object to the picture introduction [App. H, p.19]; *Brady* claim misconstrued [App. H. pp 20-21]; unreasonable application of *Strickland*, with unreasonable determination of facts in light of the facts produced at State Court proceedings [App. H, pp 32-38]; trial counsel ineffective failure to file pre-trial Motion to Quash based on discriminatory selection of grand jury foreman [App. H, pp 38-39]; Ineffective Assistance of Trial Counsel for failure to file pre-trial Motion base on defective indictment [App. H, pp 39-42]. *Martinez*, 132 S.Ct. at 1320; *Williams v. Taylor*, 529 U.S. 362, 120 S.Ct. 1495, (2000).

Long ago, this Honorable Court determined the right to counsel is the foundation for our adversary system. It is deemed a bed-rock principle and deemed as an "Obvious Truth," *Gideon v. Wainwright*, 372 U.S. 335, 344, (1963). The defendant requires the guiding hand of counsel at every step in the proceedings against him. *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932). A remand is required with the order to appoint counsel for "E.H." to determine whether trial counsel was ineffective creating cause that

prejudiced Petitioner, and but for counsel's deficient performance, there is a reasonable probability the results of proceedings would have been different instead of resulting in an unreliable results.

Also to determine whether State created impediment do to failure to appoint counsel at initial-review collateral tolled the time until State removes impediment. *Critchley v. Thaler*, 586 F.3d at 321. If the accused is not represented by counsel the 6th Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. *Solina*, 709 F.2d 169.

> The Court's Supervisory Authority needed to answer whether a Court's failure to complete the Court as the Six Amendment requires by providing counsel for indigent creates "Extraordinary Circumstances" coupled with change in law allows to proceed under Rule 60(b)(6) by grant of COA?

REASON FOR GRANTING CERTIORARI NO. III.

> III. Whether indigent forced to proceed Pro se on direct appeal with IATC claim (Patent on Face of Record), and court fails to appoint counsel at initial-review collateral on claim of IATC deprives of due process and equal protection of the law. U.S. Const., Amends 6, 14?

The issue involves decisions by Lower State and Federal Courts on important federal question of an indigent's representation on a claim of IATC before courts, in a way that conflicts with the State, Federal Appellate Court's, and this Court. In the instant case, the First Circuit Court reserved Petitioner's right to an "E.H." on PCR when it conditionally affirmed conviction and sentence. The 19th JDC "Commissioner," and, U.S. District Court Magistrate decision not to appoint counsel or hold "E.H." conflicts with the law of the case issued by the 1st Circuit that determined only in a full blown "E.H." could issue of IATC claim be decided. [App D. pp 5, 12]. Moreover, the Lower Courts decisions conflict with this Court's decisions in, *Martinez, supra; Trevino v. Thaler*, 133 S.Ct. 1911, (May 28, 2013) (Federal Habeas Court can excuse procedural default even if State does not require IATC claim be raised in an initial-review collateral proceeding and whether the IATC claim was substantial). *Buck v. Davis*, 580 U.S.___(Feb. 22, 2017) (Remanded on question of application of *Martinez* Rule); Also, *Coleman v. Goodwin*, 833 F.3d 537 (5th Cir. Aug. 15, (La) 2016):

> *Martinez/Trevino* applies in Louisiana. and exception to the procedural default doctrine, for situations in which States procedure framework made meaningful opportunity to raise IATC claim on direct appeal highly unlikely." Reversed and remanded.

Likewise, in the interest of fundamental fairness, a remand is required in Triplett's Case for a determination of whether the Lower Courts abused its discretion in failing to appoint counsel and hold "E.H." in accordance with the law of the case, and, whether Petitioner presents a substantial claim of IATC, and whether State created impediment constitute a defect in the integrity of the prior habeas corpus proceeding creating unusual and extraordinary circumstances, coupled with intervening change in law relevant to the bed-rock principle of assistance of counsel before the courts that's implicit in the concept of liberty.

REASON FOR GRANTING CERTIORARI NO. IV.

> IV. The U.S. Middle District Court, and the U.S. 5th Circuit of Louisiana has entered decisions applying 28 U.S.C., § 2244 to a Pro se, Rule 60(b)(6), needing this Court's exercise of Supervisory Authority to decide matter.

In the instant case, both U.S. District Court [App. B], U.S. 5th Circuit applied § 2244 standard to the Petitioner's Rule 60(b)(6). [App. A], based on intervening law and extraordinary circumstances as expressed herein. Neither the State or Federal Courts appointed counsel or held an "E.H." [App H, p.2]. This Court holds that when courts considers recharacterizing a Pro se entitled motions to court, warn the litigant subsequent filing subject to second or successive restrictions and provide the litigant with an opportunity to withdraw or to Amend the filing. *Castro v. U.S.*, 540 U.S. 375, 124 S.Ct. 786, 793 (2003). The Petitioner in the instant case should have been given opportunity to amend his Rule 60(b)(6) Motion before recharacterization. *Castro, supra*. In, *Satterfield v. District Attorney Philadelphia*, 872 F.3d 152 (C.A.3 (Pa.) 2017), held that district court was required to consider full panoply of equitable circumstances in determining whether change of law in Supreme Court's decision in *McQuggin v. Perkins* warranted relief from judgment. Id., at 152. The Court here, adhered to a "Case-dependent analysis," rooted in equity consideration: *Satterfield*, 872 F.3d at 161 FN10.

The Petitioner ask Court to use "Case-dependent analysis" in the evaluation of his Rule 60(b)(6) based on *McQuggins supra; Martinez/Trevino* Rule in light of the law of the case by Louisiana 1st Circuit Court of Appeals on direct appeal. [App. D].

A defect linked to the defect in the instant case where Petitioner proceeded through the entire habeas process without ever being represented by counsel on IATC claim or evidentiary hearing held under the facts of the case deprived the Petitioner of counsel representation and due process of law in violation of United States Constitutional Amendments 6, & 14. Needing this Court to exercise its Supervisory Authority to order remand for appointment of counsel and E.H. *Martinez supra*: *Lambert v. Blackwell* 387 F.3d 210 (3rd Cir. 2004) (Where District Court did not hold an evidentiary hearing court's review was plenary, the Court granted a COA); *Allen v. Vannoy*, 2016 WL 4254375 (5th Cir. Aug. 11, 2016) (A procedural bar "does not preclude review when Petitioner shows "Cause and Prejudice;" fundamental miscarriage of justice).

> This is an important federal question that involves access to the Courts for indigents who file Pro se under Rule 60(b) but recharacterized as "Second or Successive" habeas corpus followed by application of bar under 28 USC., § 2244 without opportunity to amend motion deprives of equal protection and due process of law under 14th Amendment.

REASON FOR GRANTING CERTIORARI NO. V.

> V. This Court's Supervisory Authority needed to determine whether Lower Court's recharacterization of Pro se Rule 60(b)(6) motion to a successive and/or second habeas corpus without prior opportunity to amend is an abuse of discretion denying Constitutional right to due process of law.

The Petitioner, after exhausting PCR with State Courts, filed Rule 60(b)(6) intervening change in law and extraordinary circumstances of State's refusal to appoint counsel and hold "E.H." Appellate Court determined was required to resolve issues. [App. Q]. The intervening law was issued by this Court in, *Martinez/Trevino, supra*. The U.S. Middle District of Louisiana, Magistrate Judge recharacterized Petitioner's Pro se Rule 60(b)(6), to a habeas corpus in part needing 5th Circuits authorization.

On December 27, 2016, Petitioner filed Motion for Reconsideration of denial of relief from judgment based on 5th Circuit's change in law announced in, *Coleman v. Goodwin*, 833 F.3d 837 (5th Cir. Aug. 15, 2016), held:

> Because of State's procedural frame work made meaningful opportunity to raise IATC claim on direct appeal highly unlikely, prisoners in Louisiana could benefit from the *Martinez/Trevino* Rule that at the initial-review collateral on a defaulted claim of IATC heard for the first time, a prisoner may establish cause in two ways: The first is where the State Courts did not appoint counsel in the initial-review collateral proceeding for a claim of IATC; the Second is where appointed counsel in the initial-review collateral proceeding was ineffective under the standard of, *Strickland, supra*; *Martinez*, 132 S.Ct. at 1318. [App. W].

In the instant case, the Petitioner had no counsel representation on claim of IATC on direct appeal or at the initial-review collateral. The standard under Rule 60(b)(6) is a change in law and extraordinary circumstances. The change in law announced in, *Martinez, Trevino*, and *Coleman, supra*, implicit in the concept of ordered liberty as assistance of counsel before the Courts is profoundly significant to the guarantee of counsel for indigents under, United States Constitution Amendments 6 and 14; the extraordinary circumstances involve the law of the case and the unusual circumstance of the PCR Court's failure to follow the Rule of Law in appointing counsel and holding an "E.H." at initial-review collateral which even Louisiana law provides, under, Louisiana Constitution, Art. I § 13 [App. Z1]; and LSA-La. C. Cr. P. art. 930.7 [App. Z] which is consistent with *Martinez, supra*.

The Lower Courts recharacterization of Petitioner's Rule 60(b)(6) motion is at odds with the court's decision in, *Castro v. U.S.*, *supra*, where conviction affirmed by the 11th Circuit, and cert. was granted. Held:

> District Court was required to notify defendant prior to recharacterizing motion, and provide defendant with certain warnings and the opportunity to withdraw or Amend. Recharacterization is unlike "liberal construction" in that it requires a Court to deliberately override the Pro se litigant's choice of procedural vehicle for his claim. It is a paternalistic judicial exception to the principal of party self-determination, born of the belief that "parties know better" assumption does not hold true for Pro se litigants. *Castro v. U.S.*, 124 S.Ct., at 793.

Where the petitioners only intent in his Rule 60(b)(6) motion was to contest the integrity of the prior habeas corpus proceeding. the Lower Courts recharacterizing Petitioner's Rule 60(b)(6) as a Successive habeas under § 2254 is an abuse of discretion where Petitioner never represented by counsel on claim of IATC. depriving Petitioner of adequate access to court. due process. and equal protection of the law. warranting remand with order to appoint counsel and hold evidentiary hearing. *Gonzalez v. Crosby*, 545 U.S. 524. 125 S.Ct. 2641 (2005) (When a Rule 60(b)(6) motion attacks. not the substance of the Federal Courts resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceeding). Id., at 2648; *Cox v. Horn*, 757 F.3d 113 (3rd (Pa) 2014) (Reversed and Remanded for further analysis).

> Case presents substantial question of application of Rule 60(b)(6). COA. Second/Successive application of 28 U.S.C., § 2244, § 2254, extraordinary circumstance since the passage of. *Martinez's* substantial showing of IATC.

REASON FOR GRANTING CERTIORARI NO. VI.

> VI. This case involves the important issue of whether when State fails to complete the court with the Six Amendment clause of appointment of counsel for indigent defendants. State creates an impediment constituting extraordinary circumstances sufficient to proceed under Rule 60(b)(6)?

That a defendant is entitled to Effective Assistance of Counsel on a first appeal as of right has been well established since. *Evitts v. Lucey*, 469 U.S. 387. 105 S.Ct. 830. (1985). In *Martinez v. Ryan*, *supra*. a collateral proceeding where issue of habeas counsel who failed to raise claim of IATC was used as cause to excuse procedural default of IATC claim in an initial-review collateral. Id., at 1314. The Court held the initial-review collateral was synonymous with a defendants direct appeal and a defendant is in need of an attorney. Id, at 1317. This holding is supported by the reasoning in, *Evitts*, *supra*: and, *Douglas v. California*, 372 U.S. 353, 357 (1963) (State must appoint counsel on prisoner's First Appeal).

In the instant case, Petitioner asked his appellate counsel to raise the (Patent on face of record) trial counsel's ineffectiveness for failure to do pre-trial investigation. Trial counsel showed up on the day of trial with the seriously flawed defense of representing the Petitioner against the wrong person. [App. D2]. This after having been on the case for nearly two years. This Court in, *Strickland v. Washington*, held

counsel has a duty to investigate or make reasonable decision that makes particular investigation unnecessary. Id., at 2066. Trial counsel's choice not to investigate alleged victim in the instant case where Petitioner faced with a life in prison without eligibility (a natural death sentence) was not a strategic choice within the range of professionally reasonable judgment. No reasonable counsel chooses not to know who he is representing his client against.

The Petitioner was doubly prejudiced by trial counsel's failure to concede issue and causing it to be disfavorably proved before jurors to the prejudice to himself and the Petitioner. [App D2]. This error, and the others in Petitioner's substantial showing of IATC claim clearly show counsel's errors was so serious he was not functioning as counsel guaranteed by the Six Amendment, and that deficient performance prejudiced the defense and deprived Petitioner of a fair trial whose results are unreliable where trial counsel's performance prejudiced jurors against himself and the case as a whole. Id., at 2064.

It is debatable among reasonable jurist whether the Petitioner states a valid claim of IATC, and courts below abused its discretion for failure to appoint counsel at initial-review collateral or hold evidentiary hearing on IATC under the very special circumstances of this case is debatable is consistent with *Martinez*, *Trevino*, and *Coleman v. Goodwin*, *supra*; indicating the U.S. Middle District, and U.S. 5th Circuit of Louisiana was wrong in its denial of (COA), is consistent with, *Slack v. McDaniel*, 120 S.Ct., at 1604 (2000). The Petitioner need only demonstrate "A substantial showing of the denial of a Constitutional right." 28 U.S.C., 2253 (c)(2). *Martinez*, *Trevino*, *Douglas*, *Strickland*, and *Coleman v. Goodwin*, *supra*, satisfies this standard by demonstrating jurist of reason could disagree with the Lower Court's resolution of his case, and the issue of a State created impediment to a merits ruling on IATC claims 1, 2, 5-7 on direct appeal are adequate to deserve encouragement to proceed further. *Slack* 529 U.S., at 484.

Should court determine the State created impediment entitle the Petitioner to statutory tolling under, 28 USC. § 2244 (d)(1)(B), (D)(2) See, [App. Z3] or equitable tolling because the State failed to appoint counsel who would raise the IATC claim on "direct appeal" or at initial-review collateral remand to court below for consideration of grant of COA and/or an Out of Time Appeal. *Critchley v. Thaler*, 586

F.3d 318, (5th Cir. 2009).

> This is an important federal question involving the Courts obligation to complete the Court with counsel for indigent defendants under constitutional mandate of the 6 and 14th Amendments.

REASON FOR GRANTING CERTIORARI NO. VII.

> VII. The Court's Supervisory Authority needed to answer important federal question whether a defendant preserves right to counsel at initial-review collateral when he raised IATC claim on direct appeal that was unresolved? U.S. Const., Amend. 6th, 14th.?

As indicated, State appointed counsel on appeal would not raise a (Patent) IATC claim when requested to do so. The Petitioner was forced to raise claim Pro se out of fear when raised on PCR, State would have applied the bar under LSA-La. C. Cr. P. art. 930.4 [App. Z4] in that Petitioner knew about the claim and should have raised it on appeal. Even though the 1st Circuit determined issue of trial counsel's ineffectiveness could only be decided in a full blown E.H. where the defendant could present evidence from outside the record, at initial-review collateral the State provided indigent no assistance of counsel, or held E.H. [App; E1, p.5; App. H, p.2]. The State District Court and Federal District Court denied Petitioner Constitutional rights to assistance of counsel, equal protection, and due process under the unusual and extraordinary circumstances of the law of the case issued by the First Circuit [App. D] which entitled Petitioner to representation at initial-review collateral on IATC, and because he was not, he is entitled to the equitable relief announced in, *Martinez, supra*, and now extended by the U.S.5th Circuit in, *Coleman v. Goodwin, supra*. As relief, Petitioner prays for remand with order to appoint counsel and hold evidentiary hearing. As a result of State created impediment, grant equitable tolling once impediment removed to file out of time petition. This is consistent with, *Fleming v. Evans*, 481 F.3d 1249 (10th Cir. 2007) (vacated and remanded; with COA granted for determination of Equitable Tolling).

> This question is substantial as it involves question whether State obligated to provide counsel at initial-review collateral on IATC claim that was removed from direct appeal where Petitioner had Constitutional right to counsel?

REASON FOR GRANTING CERTIORARI NO. VIII.

VIII. This Courts Supervisory Authority needed to establish uniformity in Lower Court's application of § 2254 successive petition standard to a, Rule 60(b)(6) that challenges a prior habeas proceedings integrity because of a structural defect, subjecting Petitioner to denial of due process under, U.S. Const., Amend.'s 6, 14th.

The Petitioner was subjected to a structural defect of proceeding through courts, from prison on an IATC claim without representation of counsel in violation of due process and equal protection of law. *Gideon v. Wainwright*, 83 S.Ct. 792, 796 (1963). An accused's right to counsel representation before courts is a fundamental component of American Criminal Justice System. A First Appeal as of right is not adjudicated in accordance with due process if the Appellant does not have the Effective Assistance of an attorney. This Court in *Martinez* recognized that defendants initial-review collateral on IATC claim is the equivalent to a defendant's direct appeal. Because Petitioner was denied counsel at this critical stage on IATC claim that had been first raised on direct appeal, but State moved claim outside of direct appeal where counsel is constitutionally guaranteed, the State creates an impediment that diminishes Petitioner's ability to file such claim. *Trevino, supra*. The Petitioner needs this Court to exercise its Supervisory Authority to determine whether Petitioner, under facts of his case, is entitled to the equitable relief of *Martinez* with remand for evidentiary hearing and appointment of counsel on claim of IATC.

This is a substantial question involving uniformity in Federal Court's decision since the landscape change decision of *Martinez v. Ryan's* substantial showing of IATC, and extraordinary circumstances under Rule 60(b)(6) needing this Court to exercise its Supervisory Authority to revisit issue.

REASON FOR GRANTING CERTIORARI NO. IX.

IX. Movant's Substantial Showing Trial Counsel's Cumulative Errors Rendered Actual Objective Deficient Performance That Prejudiced Movant By Denial Of A Fair Trial, And There Is A Reasonable Probability But For Counsel's Deficient Performance The Results Of The Proceeding Would Have Been Different. *Martinez, supra*; *Strickland v. Washington*, 466 U.S. 688, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984)

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* Petitioner adopts and incorporates his argument to these claims from his Rule 60(b)(6),Oct. 4, 2013; memorandum in support of COA, May 23, 2017, substantial showing of trial counsel's cumulative errors beginning at 4 of 28 ending at 28 + 28. [App. B3]

1. *TRIAL COUNSEL INEFFECTIVE AT MOTION TO QUASH*

Trial Counsel failed to hold State to November 09, 1994, Motioned for Speedy Trial stipulation agreement with State that if not ready for trial, January 23, 1995, the charges would be dropped and indictment dismissed. The Movant was arrested June 04, 1994, being indicted August 04, 1994. [App. Y]. The Movant's trial did not commence until October 28, 1996, some 4 months and 24 days past the State's Legislated Speedy Trial under *LSA-C.Cr.P. Art. 578(2)* two years for felony offenses subject to imprisonment of one year or more. [App. Z7] The State argues motion were filed. The latest of these August 21, 1995, thus the State had one year to bring Movant to trial. The Louisiana Supreme Court held that "Joseph Morris" who was billed on February 7, 1997, had until February 7, 1999, to bring relator to trial *Art. 578(2)*. The February 12, 1997, continuance had no bearing on the prescription because the one year minimum time period provided by Art. 580 for bringing the accused to trial after Court ruled on the motion was far less than the balance of the original two year term provided. *State v. Morris*, 755 So.2d 205 (La. 2/18/00), reversed and remanded.

If a Defendant show that the State has failed to commence trial within the 2 year prescriptive period after it institutes prosecution, the State then bears the heavy burden of demonstrating that either an interruption or a suspension of the time limit has tolled prescription. *State v. Rome*, 630 So.2d 1284, 1286 (La. 1994); *State v. Joseph*, 637 So.2d 1032 (La. 6/3/94), State Court decision an unreasonable application of clearly established law by the United States Supreme Court, in *Barker v. Wingo*, 407 U.S. 514 92 S.Ct. 2182, (1972), four factor test to determine when a Defendant's Constitutional right to a Speedy Trial has been violated:

> 1. The length of the delay; 2) The reason for the delay; 3) The Defendant's assertion of the Speedy Trial right; and 4) The prejudice to the Defendant. *Barker*, 407 U.S. at 530 92 S.Ct. at 2192.

The first three was in Movant's favor [App. H, pp 5-9], even though State argued there was no stipulation agreement made between State and defendant, November 9, 1994, there was in Judge Micheal Erwin's Court, records Petitioner has requested and been denied. (Motion for Production of Documents,

"Clerk of Ct", 19th JDC Exhibit -I); herein [App. E, pp. 2]. Where counsel failed to argue issue of prejudice, jurisdictional time limitations bar, and request "EH" on November 9, 1994 stipulation and other controversial motions filed constitute IATC that fails to subject State's case to meaningful adversarial testing resulting in deficient performance that prejudiced Petitioner with a case going to trial that never should have had it been properly challenged.

Where such issues existed the Louisiana 3rd Circuit remanded for an E.H. to determine the issue of who requested continuances. *State v. Catalon*, 158 So.2d 114 (La. 3rd Cir. 12/23/14). Trial Counsel ineffective for failure to hold State to its burden of a full and fair hearing on prejudice to Petitioner. Petitioner should have been granted a COA on the equitable relief of *Martinez*, *Trevino*, and *Coleman v. Goodwin*, indicating issue is debatable among reasonable juris and as issue presented is deserving of encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595 (2000). Reasonable jurists would find the Lower Courts assessment of his Rule 60(b)(6) and constitutional claim of IATC debatable or wrong. Id., at 1604; *Brown v. Brown*, 847 F.3d 502 (C.A. 7th (Ind.) 2017) (Reversed and remanded District Court's denial of habeas corpus where substantial showing of IATC pursuant to Martinez/Trevino).

> This is an important public issue that impacts on judiciary efficiency and appointment of counsel for indigents since *Martinez*.

2. *COUNSEL FAILURE TO RAISE ISSUE OF PREJUDICE DURING MOTION TO QUASH*

Trial Counsel's failure to raise prejudice issue in Speedy Trial claim is deficient performance that prejudiced Movant. The Lower Courts holding otherwise is contrary to, and involves an unreasonable application of clearly established law by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 688, 687, 104 S.Ct., at 2063; *Barker v. Wingo*, 407 U.S. at 530-33, 92 S.Ct., at 2192-93; *Williams v. Taylor*, 529 U.S. 362, (2000); 28 U.S.C., § 2254 (d)(1)(2).

Movant lost contact with witnesses, and States witnesses fail to recall important material issues relevant to the June 4. 1994. incident. Counsel failed to impeach witnesses inconsistencies. discrepancies. and contradiction that was laced with perjury. See [trial testimony of witnesses from transcript of October 30, 31, 1996, Exhibit-J],*. herein [App. E, pp. 22-27]. Nor did counsel argue State lacked jurisdiction where 2-year limitations had expired. On direct appeal, prejudice and IATC claims were not resolved. The Commissioner applied 930.4 at initial review collateral and failed to appoint counsel to represent Movant. [App. E1, p.3]. An attorney is obligated to provide a Defendant with reasonable assistance. In the instant case, the attorney's performance at trial fell below an objective standard of reasonableness that resulted in prejudice to Movant, and there is a reasonable probability that but for Counsel's errors, the results of the proceedings would have been different, *Strickland v. Washington*, 104 S.Ct., at 2068. An inquiry, "E. H." into Counsel's conversations with the Defendant be critical to a proper assessment of Counsel's investigation and other litigation decisions because Ineffectiveness of counsel is a mixed question of law and fact. *Strickland*, 104 S.Ct., at 2066, 2070.

The Movant should have been granted "E.H.", because he was not, he was deprived of a full and fair hearing resulting in denial of Effective Assistance of Trial Counsel in violation of, U.S. Const., Amends 6, 14. It is debatable among reasonable jurist counsel proved ineffective in failing to investigate and present this major claim before the Court. Because IATC is of grave necessity in receiving Fairness before Courts, it deserves encouragement to proceed further with grant of COA. *Strickland v. Washington*, *supra*. *Barker v. Wingo*, *supra*; *Slack v. McDaniel*, 120 S.Ct. 95, (2000).

3. COUNSEL FAIL TO DO PRE-TRIAL INVESTIGATION, IATC

a) Counsel Never Conferenced With Movant To Develop Trial Strategy;

b) Deprived Movant Of Sixth Amendment Right To Compulsory Process In That He Failed To Contact Known Witnesses Or Subpoena Them For Trial.

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* All reference to Exhibits are filed in Courts below, which records Petitioner request be called forth, for review.

Only Defense was there was no intercourse and the acts engaged were consensual which boiled down to Movant's word against alleged victim's. The Court holds where only one line of Defense Counsel must conduct a reasonable investigation into the line of Defense, with independent examination of the facts, circumstances, pleading, and law involved. ***Strickland***, 104 S.Ct., at 2061. Such was absent from Counsel's performance in the instant case where he did not know who he was representing against, due to failure to do pre-trial investigation counsel presented a seriously flawed Defense that prejudiced Movant. Had counsel done adequate pre-trial investigation he would have known who he was representing Petitioner against, and, subpoenaed witnesses whose names and addresses he knew.

PETITIONER'S DEFENSE IMPAIRED BY DELAY

The Petitioner was advised at the June 27, 1996, status conference to not worry about the Oct. 28, 1996, trial date because as his Defense counsel explained, quote:

> "I am going to file a motion to dismiss and I am pretty sure the judge will grant it, therefore, there is no need to worry about the Oct. 28, 1996, trial date." unquote.

Defense Counsel seemed as surprised as Petitioner case proceeded to trial and neither Defense Counsel or the Petitioner was prepared for trial based upon having not subpoenaed a single witness of the several Movant had requested to be subpoenaed. (Pro se Supplemental Brief, 1st Circuit Court of Appeals, P.15, Lns. 31-32; P.52, Lns. 30-31; P.53, Lns. 1-13, (1997)) herein [App X]. In addition to these witnesses, requested for other witnesses to be called to testify as follows:

1. James Patterson & Wife 205 Atchafalays Street Port Allen, La. 70765 Phone #387-6319	2. Ray Williams Peach Street Baton Rouge, La. 70802	3. Cyrus Chaney 2865 Bridge Gen. Isaac Smith Ave. Q-7 & 8 Scotlandville, La. 70807
4) Theodis Roberson Williams Efficiency Roaming South Blvd. & 13 St. Baton Rouge, La. 70802	5) Freddie Porter 1203 Court State Port Allen, La. 70767	6) Henry P. Harris Blanchard Court Baton Rouge, La. 70802

[Perjured Testimony of "Letha Jackson", Exhibit - Q; Exhibit -J, P. 0-5] herein [App. X2].

NATURE OF WITNESSES TESTIMONY

James Patterson and his wife were willing to testify they knew both Petitioner and alleged victim. That the allege victim once made false allegations to Mr. Patterson's wife he had sexually assaulted her which Mr. Patterson maintained was untrue. They would have also testified that alleged victim is a prostitute and drug user who prostituted in the area of Northdale where they once lived.

Mr. Ray Williams would have testified that he and alleged victim was at the corner of South Blvd. & 13th Street, and both were subject to a police search which resulted in alleged victim being issued a court summons for possession of two marijuana cigarettes where alleged victim used an alias name and was not prosecuted for charge as proof she had used other names. Mr. Williams was also willing to testify that on yet another occasion victim was shot as direct acts of prostitution, and on yet another occasion the alleged victim had cut a man with a knife as a result of drug use and acts of prostitution.

Mr. Cyrus Chaney was willing to testify he knew the alleged victim very well, and that she was a prostitute, and she had falsely accused another man on another occasion.

Mr. Freddie Porter, was willing also to testify alleged victim had lived with him and was in fact a prostitute, as well as drug abuser.

Mr. Henry P. Harris, was willing to testify that minutes before the incident occurred in the park, Mr. Harris and his wife saw alleged victim and Petitioner walking down the street hugging and kissing as well as he knows victim to be prostitute and had seen Petitioner and victim on other occasions. [Affidavit, "Henry R. Harris," Exhibit-K]. herein [App. X3].

Because these witnesses were not available due to delays attributable to the State, the jury was deprived of important character testimony it was entitled in order to weigh the credibility on the issue of whether or not she consented, resulting in a trial whose results are unreliable, unfair, where Movant is denied fundamental right to prepare Defense, as well as, rendering Petitioner's Defense counsel constructively ineffective because of actions on the part of the prosecution designed to gain a tactical advantage over the Petitioner in the prosecution, requiring the grant of COA with instructions to appoint

counsel and hold E.H. U.S. Const., Amend's. #6; #14. *Klopfer*, 87 S.Ct. at 993; *Barker*, 407 U.S. at 531 n. 32, 92 S.Ct. at 2192 n. 32; *Strickland v. Washington*, *supra*. [State witness faded memory, perjured evidence Exhibit-J_2] [App. X4]

4. *TRIAL COUNSEL'S FAILURE TO OBJECT TO INTRODUCTION OF OTHER CRIMES EVIDENCE*

Movant Raised This Claim Contending He Was Prejudiced By The Prosecutor Introduction Of Crimes From 1964, 1969, 1977 In Movant's 1996 Trial, And Counsel Failure To Have Objected Deprived Movant Of A Fair Trial, Due Process, And The Fundamental Right To The Effective Assistance Of Counsel In Violation Of, U.S. Const., Amends 6, 14.

At Movant's trial, prosecutor introduced a 19 year old arrest Movant never convicted of. Movant still does not remember the charges from 1964, 1969, and he is certain the 1969 obscenity charge was not Movant and possibly his father who bears the same name as he, Willie Triplett (Jr), which Movant seldom uses. Although prosecutor claims this evidence was introduced because the Defense counsel opened the door, [App. Y4, pp. 93-96]. The evidence was too prejudicial where prosecutor refers to the 1977 arrest in his closing argument, quote:

> "I Remind You The Defendant Was Charged In 1977 Of A Similar Charge. That Victim Did Not Come To Court; However, The Victim Is Here Today. . !" Unquote.
> [Motion For Production Of Closing Argument, Exhibit-E_2] herein, [App. E, p.3].

Trial Counsel lodged no objection, with Trial Judge abusing his discretion to allow this highly prejudicial evidence go forward over its non probative value. This Court in, *Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644 (1997), held abuse of discretion when Trial Judge fails to weigh the admissibility of prior criminal records probative value against the prejudicial effect. *Old Chief v. United States*, 117 S.Ct. at 644-645. In, *Jefferies v. Woods*, 114 F.3d 1490, the Court held:

> "The possible prejudice is more likely when the past record is related to the crime for which the defendant is on trial" *Id.*

Even the Federal Magistrate's Report acknowledge defense counsel asked the defendant question concerning arrest for sexually oriented crimes, and did not object to any questions by prosecutor relating to

Petitioner's arrests or convictions nor did he request a limiting instruction. [App. H, pp. 15-16]. Magistrate reasoned evidence of the arrests may have prejudiced Petitioner's defense but was harmless. [App. H, p. 18]. Yet, it is undisputed no competent defense attorney would introduce such evidence about his own client. *Buck v. Davis*, 137 S.Ct., at 775.

The State argues it was defendants own counsel, not the prosecution who elicited the offending testimony. [App. H, p.17]. This Honorable Court has acknowledged that when a defendant's own lawyer puts in the offending evidence, it is in the nature of an admissions against interest, more likely to be taken at face value, and demonstrates prejudice. *Buck v. Davis*, 137 S.Ct., at 777. This Court's holding on introduction of prejudicial other crimes evidence makes clear that Petitioner may have been convicted and sentenced to life in part because of court's admissions of other crimes evidence and counsel's ineffectiveness. *Old Chief v. United States*, 117 S.Ct. at 644-45.

In, *Goodman v. Bertrand*, 467 F.3d 1022, (7th Cir. Oct. 31, 2006), the Court of Appeals reversed and remanded a District Court's denial of habeas corpus using improper standard for IATC who asked defendant a question that led the Court to allow cross-examination on two previous Armed Robbery convictions; failed to subpoena store's cashier to testify; failed to request a limiting on threats evidence; failed to properly object and preserve the record regarding defendant's right to confront a witness against him; failed to object and request a mistrial based upon prosecutor misconduct in closing argument. Cumulative effect of counsel's errors Ineffective Assistance. Court unreasonably applied *Strickland*. *Goodman*, 467 F.3d at 1030; *Burns v. Gammon*, 260 F.3d 892, 897 (8th Cir. 2001).

Under Louisiana's Law, a *Prieur Hearing* is required prior to trial to determine the admissibility of intended evidence relevancy to the charged offenses, unfairly prejudicial or connexity. Movant filed pretrial motion for Disclosure of any intention on part of State to introduce any other crimes evidence and to hold hearing, however, no *Prieur* hearing held. [App. Y2]. In holding other crimes evidence were not admissible "Integral Act" evidence, reversed and remanded Defendant's case. *State v. Scott*, 184 So.3d 2 (La. 11/30/15); *State v. Prieur*, 277 So.2d 126 (La. 1973). U.S. Const., Amend. 6, 14.

Trial Counsel was not advocating Movant's cause where he fails to protect Movant's right to a fair trial and due process. It is debatable among reasonable jurist but for Counsel's unprofessional performance Movant would not have had this other crimes evidence brought up against him, and prejudiced before jurors. Because of the cumulative errors effect, Petitioner should have been granted COA, and the claim of IATC deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 95 (2000)

5. ***TRIAL COUNSEL FAILED TO OBJECT TO PREJUDICIAL PICTURE INEFFECTIVE ASSISTANCE***

At Movant's 1996 Trial The Prosecutor Introduced Crime Scene Photograph Of Alleged Victim Without Giving Movant The Opportunity To Confront And Cross-examine Officer Who Took Picture.

There was no authentication by officer's in Court testimony. Trial Counsel failed to lodge objection depriving Movant of his fundamental right to effective assistance under the Six and Fourteenth Amendments to the United States Constitution. This picture evidence was a crucial, critical and highly significant factor where Movant and alleged victim were detained at the scene and State fails to do Rape Kit, or require alleged victim to undergo a doctor's examination. The Sixth Amendment provides in pertinent part that:

"In All Criminal Prosecutions, The Accused Shall Enjoy The Right. . .to
Confront Witnesses, Present Defense, And
Assistance Of Counsel."

U.S. Const., Amend. 6; *Pointer v. Tex.*, 380 U.S. 400, 403 (1965); *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038 (1973); *Ohio v. Roberts*, 448 U.S. 56 (1980); *Crawford v. Washington*, 541 U.S. 36, (2004). The Court held in a recent case that a Certificate declaring a substance to be an illegal drug was "functionally identical to live, in Court testimony" and therefore was testimonial hearsay under *Melendez-Diaz v. Mass.*, 129 S.Ct. 2527, 2532 (2009). [App. H5].

Because the State failed to produce crime scene lab photographer's in Court testimony for authentication of picture evidence, the Movant was deprived of the Constitutional right to confront and cross-examine those who bore evidence introduced at trial. Where Trial Counsel fails to protect Movant's

fundamental rights by failure to object he cease being advocate for Movant joining the State in securing a conviction. Such actions are not what Sixth Amendment envisions. Jurists of reason would find it debatable whether Movant States a valid claim of the denial of the Constitutional right to confront, and jurist of reason would find it debatable whether the District Court was correct in its rejection of Movant's *Rule 60(b)(6)* Motion For Reconsideration based on change in law, and the extraordinary circumstances of having no counsel at initial-review collateral on claim of IATC even though the Louisiana 1st Circuit Court of Appeals declared an Evidentiary Hearing be necessary. *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 95, (2000); *Strickland v. Washington, supra*. It is debatable whether reasonable jurist would debate Movant has stated the denial of the right to effective assistance of trial counsel, and as claim presented adequate to deserve encouragement to proceed further. *Slack, supra*.

6. *TRIAL COUNSEL ALLOWED MOVANT TO BE PUT IN DOUBLE JEOPARDY AFTER PROSECUTOR PROVOKED MISTRIAL REQUEST*

When 6 Blacks And 6 Whites Jurors Were Sworn And Impaneled With Two Alternates, Prosecutor Intentionally Goaded Defense Into Requesting Mistrial And Before Mistrial Declared Defense Motioned For Dismissal Based On Prosecutorial Misconduct, But Was Denied. [Mistrial, App. H1, P. 8, Lns. 10-28; P.9, Lns. 1-4]

However, judge abused discretion where he found the actions by the prosecutor was intentional but no finding of misconduct, and declared a mistrial counsel failed to object to. There was no manifest necessity for mistrial, and trial counsel nor judge sought alternative to declaration of a mistrial. In, *Downum v. U.S.*, 372 U.S. 734, 737-38 (1963), the Court held jeopardy attached when jury impaneled and sworn. Not only did counsel fail to object, he failed to submit "bills of exception" to preserve claim for Appellate review. Movant was prejudiced in his right to a fair trial by Counsel's failure to provide meaningful adversarial testing through proper case development. Trial Strategy, nor advise or counsel on the risk involved in testifying from witness stand and protecting Movant's substantive rights under the Fifth, Sixth and Fourteenth Amendments to United States Constitution. *Strickland*, 104 S.Ct. 2052. Movant's Trial Counsel should have raised the Double Jeopardy issue where the Trial Judge found prosecutor intentionally called the jurors attention to the fact Movant may or may not have offered

evidence before the Grand Jury [Mistrial App. H1, p. 12], was a pretext to dismiss the jury of 6 blacks and 6 whites and empanel another of 11 whites and one (1) black. Also, the asserted opportunity to present any testimony or evidence before the Grand Jury was an absolute falsity with no basis in law. [Mistrial, Exhibit-M] herein [App. H1. pp. 3. Lns. 25-29; p.4. Lns. 2-14].

At petitioners trial the issue of mistrial erupted at the opening statements of the case where defense counsel explained that a grand jury indictment doesn't mean a defendant is guilty. Grand Juries are unlike juries such as yourself and that person is not represented. And it's pretty much a DA's ball game. He has the ball, no one else can take the ball.

Mr. Brock: Your Honor, I- -

Mr. Brown: It is a different standard of proof. . .

Mr. Brock: Your Honor, I only want to object to his characterization of, it's a DA's ball game that the defendant had no opportunity to testify or no opportunity to present evidence at that grand jury . . .I would object to the mischaracterization that the defendant did not have an opportunity to testify at that grand jury.

Mr. Brown: Your Honor, can we approach the bench?

The Court: All right.

Reporter's Note: (Side bar conference was held.)

Mr. Brown: Mr. Brock has just made a fatal error. I am going to have to motion, outside of the hearing of the jury, for a mistrial. . .

Reporter's Note: Jury excused.

Mr. Brown: Your Honor, I would motion for a mistrial at this time. Mr. Brock has commented upon my client's Constitutional right not to take the witness stand, and be it before a grand jury or before a jury in the trial as to his guilt or innocence it is still comment upon his utilizing his Constitutional right . . .P.4.; I said he was not represented at the grand jury. Whatever I said, the State is not allowed to comment upon his not taking the stand, and I believe it is fatal error, your Honor, and I am going to motion for a mistrial, and I do believe that it substantially impairs his opportunity to get a fair trial in this matter.

The Court: Okay.

Mr. Brock: Judge I didn't even mention anything about his not taking the stand at this trial. I mentioned that he had an opportunity to participate in the grand jury process and present any evidence that he desired to do so He misstated and talked about the grand jury process which is totally off limits. He should have never mentioned it at all. He opened the door on that and he lied to this jury by saying that he was unrepresented at the grand jury. That is a complete falsehood, and I have a right to come back and say that he has - - had an opportunity at the grand jury process to present evidence and any evidence he want to. . .

The Court: Let's look back at it. . .P.5.

Recess (Trial Resumes)

The Court: This is a very close call in my opinion . . .

Mr. Brock: And, Judge, you're . .you're hanging up on the issue as- -that my mentioning of the grand jury--

The Court: His--that he had the right to testify at the grand jury.

Mr. Brock: Right.

The Court: Article 770 does not indicate whether that comment has to be with regard to some other proceeding. And that is where I am hung up...This is a close call in my opinion. [Mistrial, App. H1, p.6, Lns. 12-13].

The Court: For whatever reason you intentionally called the jury's attention to that respect. . the way to do that is to say, Mr. Brown-I object, your Honor, the defendant was represented at the grand jury. . .But you didn't have to get into this language, well, he could have testified and put on evidence at the grand jury and stuff. That was not the way to do it. . .You intentionally called the jury to that. For whatever reason you intentionally called them to the fact that he may or may not have testified at the grand or failure to testify at the grand jury, I don't know. [P.7].

(The State and Court speaks as though this was some right or opportunity Petitioner has which must be the falsehood or untruth the prosecutor refers because the law of grand jury does not permit such access nor was I ever present to the grand jury. Moreover, petitioners defense attorney never talked with him concerning the grand jury process. However, to the extent counsel misstated the facts in relations to the grand jury, and failed to object at the start of the new trial on double jeopardy grounds counsel was ineffective under *Strickland v. Washington*.)

The Petitioner sets forth the Judge, prosecutor, and trial counsel knew State could not goad the defense into requesting a mistrial. (Mistrial, Exhibit-M), herein, [App. H1, p.7, Lns. 2-4, 11-25]. In *Oregan v. Kennedy*, 456 U.S. 667, 676 (1982), the Court held where government conduct intended to "goad" Defendant into moving for mistrial, Defendant may raise Double Jeopardy to second trial. Regardless of Trial Judges ruling on Motion to Dismiss, Trial Counsel should have exercised, the Collateral Order Doctrine and sought immediate Appeal based on Double Jeopardy grounds Constitutional privilege not being irretrievably lost. *Abney v U.S.*, 431 U.S. 651, 659-62 (1977). Counsel does not perform reasonable when he fails to protect Movant's guarantee not to be placed twice in jeopardy. The

trial court conclude it would err on the side of caution [App. H1, p. 10,Line 29]. In the instant case, counsel abdicated his duty of loyalty to advocate Movant's cause to basic protection under Constitution not to be twice in jeopardy. Lower Courts holding to the contrary, is contrary to, and an unreasonable application of clearly established law by this Court in, *Strickland v. Washington*, *supra*; *Abney v. U.S.*, *supra*. *Williams v. Taylor*, 529 U.S. at 396. It is debatable among reasonable jurist whether trial counsel's failure to object to second trial constitute IATC for which COA should have been granted, *Goodman v. Bertrand*, *supra*; *Burns v. Gammon*, *supra*, *Miller El v. Cockrell*, *supra* and issue as presented deserves encouragement to proceed further. *Slack v. McDaniel*, *supra*.

7. ***TRIAL COUNSEL FAILED TO CHALLENGE UNDER REPRESENTATION OF BLACKS AS GRAND JURY FOREMEN FOR THE PARISH OF EAST BATON ROUGE BY FILING PRETRIAL MOTION TO QUASH BASE ON EQUAL PROTECTION, IATC. U.S. CONST. AMENDS 6, 14.***

In the instant case, Movant raised he was deprived of Equal Protection by the under representation of blacks to the Grand Jury foreman position and Trial Counsel proved ineffective by not filing a pretrial motion challenging the under representation based on the statistical showing. When counsel appointed by State fails to protect Defendant's Constitutional Right to Equal Protection by failure to file pretrial objection, Movant is deprived of Constitutional Right under 6th to effective assistance of trial counsel. Counsel's ineffectiveness is magnified where the statutory provision, *LSA-C.Cr.P. Art. 413(B)* has been declared unconstitutional [Act No. 984. House Bill No. 787. by representative Dupre. approved by governor July 9, 1999]. It has been revealed that those in the legal field have known about the unconstitutionality of art. 413(B)allowing the judge to select Grand Jury foreman and under representation of blacks at least since *Ballard v. United States*, 329 U.S. at 195, 67 S.Ct., at 265 (1946); *Hernandez v. Texas*, 347 U.S. 475, (1954); *Alexander v. Louisiana*, 405 U.S., at 632, 92 S.Ct., at 1226 (1972). Movant entitled to impartial jurors from a cross section of community and appointed counsel who protects the vital interests of his client. Because Movant was deprived of these essential elements to a fair tribunal it is debatable among reasonable jurist whether Defense counsel should have filed a pretrial motion challenging

413(B), and jurist of reason would find it debatable whether Counsel's failure to have done so prejudice Movant in proceedings where Movant establishes that from 1976-1995 only 5 Grand Jury foremen were black with an average of low 14-21% of the population from 1957-1967; 21-24% from 1967-1982; however, blacks averaged 24-30% from 1982-1992. Out of 54 opportunities to select a Grand Jury foreman, only 6 blacks were chosen, which requires a rebuttal showing of a neutral non-discriminary motive for outcome by the State. Further, from 1957-1993, a period of approximately 36 years with more than 70 opportunities to choose Grand Jury foremen only (7) blacks were chosen to serve as Grand Jury Foreman. Any competent counsel based on the State of the Law, and the statistical under representation of blacks would have advocated on his clients behalf by filing a pretrial Motion to Quash the indictment based on discrimination in selection of Grand Jurors in violation of Equal Protection. Counsels performance was deficient and the deficient performance prejudice Movant in his guaranteed right to be judged by an unbiased tribunal.

The Lower Court applied 930.4 to bar review of the claim. Movant argues he overcomes the bar by cause and prejudice, where Court fails to comply with Sixth Amendment right to counsel, right to confront, to present a Defense, and indictment resulting from a discriminatory process, counsel ineffective, and Movant raised IATC on direct appeal and (initial-review collateral) on PCR. Lower Courts decision to the contrary, is contrary to, and an unreasonable application of clearly established law by the Supreme Court in, *Castaneda v. Partida*, 430 U.S. 482, 97 S.Ct. 1272 (1977)[1]; *Strickland v. Washington*, *supra*; *Miller El. v. Cockrell*, *supra*. COA should have been granted.

8. *TRIAL COUNSEL INEFFECTIVE (IATC)*

> In The Instant Case. Movant's Indictment Read S. Barnes For Victim. Counsel Built Defense Against Sonis Barnes Who Had Criminal History. The Counsel Was Representing Against Allegations Of Sonya Barnes. Instead Of Conceding Point, He Adamantly Maintained The Mug Shot He Had Was That Of The Alleged Victim, With The Point Having To Be Proved Out Before Jurors To Contrary.

1 Register of voters - East Baton Rouge 1972 through 1988; Department of Elections and Registration - East Baton Rouge 1957 through 1993; East Baton Rouge Parish Grand Jury foreman 1983 through 1995; ***Act No. 924*** to Amend and Reenact Article 413(B) [Exhibit-N]

[T. Tr., Oct. 30, 31, 1996, Pp. 105-106; Pp. 22-36, 71-73, respectively, Exhibit-D]. herein, [App. D2]. The Supreme Court in *Strickland v. Washington*, *supra* holds that the Sixth Amendment imposes on counsel a duty to investigate, because reasonable effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of option. *Id.* at 2060. In the case at bar, counsel failed to contact and interview witnesses' even though he was given their names and locations. However, they were never contacted. Had counsel investigated, he would have known who he was representing against, and not prejudiced Movant by disproving issues before jurors, resulting in unfavorable results. It's a serious error when counsel shows up for trial with a flawed Defense against a person not involved in case deprives Movant of a fair trial. *Id.*, at 2064. It is debatable among reasonable jurist whether Movant received ineffective assistance of Trial Counsel in violation of the Sixth Amendment, and jurist of reason would debate whether Movant received a fair trial. U.S.C.A. Const., Amend. 6, 14. *Miller El v. Cockrell*, *supra*; *Slack v. McDaniel*, *supra*.

The Lower Court's holding otherwise is contrary to, and involves an unreasonable application of clearly established federal law, as determined by this Court in *Strickland v. Washington*, *supra*, which holds a counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigation unnecessary which must be directly assessed for reasonableness in all the circumstances. *Id.* at, 2066.

9. TRIAL COUNSEL'S FAILURE TO RAISE BRADY VIOLATION IATC

> Trial counsel proved ineffective where he failed to seek a dismissal on the basis of due process based on *Brady* violation and right to present a defense. *Strickland v. Washington*, U.S. Const., Amends 6, 14th; 466 U.S. 688, 104 S.Ct. 2052 (1984); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, (1963).

This Court holds a Brady violation occurs when. 1) evidence is favorable to accused because it is exculpatory or impeaching; 2) evidence was suppressed by the State, either willfully or inadvertently, and 3) prejudiced ensued. *Brady supra*. At Petitioner's trial arresting officer testified he pulled Petitioner off alleged victim and witnessed Petitioner's erect penis coming out vagina, testimony in major variance from

officer's police report. and trial testimony. [App. X] T.Tr. Oct. 31. 1996. "Trial testimony of officer" Joe Williams" [App. Y1. pp. 41. 46. 47]. The State's failure to turn over officer's anticipated trial testimony violated ***Brady*** Rule where the Supreme Court has made clear:

> "Our cases make clear that ***Brady's*** disclosure requirements extend to materials thought, whatever their other characteristics, may be used to impeach a witness."

When the State withholds from a defendant evidence that is material to guilt or punishment, it violates due process under 14th Amendment. ***Brady, supra***. A ***Brady*** violation may arise if the government fails to take the most rudimentary steps to obtain access to, preserve, or to promptly disclose exculpatory evidence. ***Arizona v. Youngblood***, 488 U.S. 51, 109 S.Ct. 333 (1988). In the instant case, the arresting officer acted in "bad faith" where both Petitioner and alleged victim were in custody at scene of the June 4, 1994 "City Park" incident and fails to obtain and preserve exculpatory and impeachment evidence by requiring alleged victim submit to "Rape Kit", and be examined by a medical physician, even in the face of petitioners denial of rape. The Petitioner had civil rights action pending in Federal Court against Baton Rouge City Police Officers Otis Nocasta and David Brasier, co-workers of arresting officer who worked at same police substation as he. This suppressed evidence was material and favorable as it would have substantiated there was no intercourse between alleged victim and Petitioner. The States suppression of this vital medical evidence deprived Petitioner of impeachment evidence and right to present a defense.

Trial counsel's failure to raise issues constitute deficient performance that prejudiced Petitioner and deprived him of effective assistance of trial counsel and a fair trial. ***Strickland, supra***; ***Brady, supra***.

> This is a substantial issue of important public interest of the obligation of investigative law enforcement agencies to collect and preserve evidence essential to prosecution of a criminal case.

REASON FOR GRANTING CERTIORARI NO. X.

> **X.** Substantial showing of IATC under Martinez does not raise new claim as Lower Court's suggest, deprives of merits ruling in violation of due process of law under 14th Amendment.

For over 24 years, Petitioner has argued, as he does now he received (IATC). The Petitioner's motions are based on intervening law announced in, ***Martinez v. Ryan***, holding that IATC claims first

heard initial-review collateral a defendant is entitled to effective representation to make out his claim. Id. This rule was later extended to Texas then Louisiana. *Trevino v. Thaler*, 133 S.Ct. 1911 (May 23, 2013); *Coleman v. Goodwin*, 833 F.3d 837 (5th Cir. Aug. 15, 2016). The Petitioner filed within one year of each ruling, including *Buck v. Davis* 137 S.Ct., at 759 (Feb. 22, 2017). In order to meet the standard under *Martinez* Petitioner has to make a substantial showing of IATC. In making this showing Petitioner raised nine area's showing counsel was egregiously ineffective as previously noted. No new claim raised where Petitioner only makes a substantial showing his Constitutional rights were violated due to a structural defect in the prior habeas proceeding of no counsel at initial-review collateral or "E.H" held, and Petitioner denied effective assistance of trial counsel in violation of United States Constitutional Amendments 6, 14. Petitioners motion for relief from judgment under Rule 60(b)(6) based on *Martinez/Trevino/Coleman v. Goodwin*, and the unusual extraordinary circumstances of the "Law of the Case" issued by the Louisiana 1st Circuit should have been granted, with COA where he demonstrates that reasonable jurists would find the Lower Court's assessment of his claim of IATC debatable or wrong. *Slack v. McDaniel*, 120 S.Ct., at 1604.

REASON FOR GRANTING CERTIORARI NO. XI.

> **XI.** Lower Courts denial of COA, IFP, with memorandum in support on IATC is an abuse of discretion that deprives Petitioner of due process of law under, U.S. Const., Amend. 14; 28 USC, § 2253 (c).

The Petitioner filed his motions requesting IFP with affidavit in support, COA with memorandum in support requesting relief from judgment under Rule 60(b)(6) with both U.S. Middle District, and U.S. 5th Circuit Courts denied [App. O, P; App. P1.] The Lower Court's denial of IFP, COA, are objectively unreasonable in light of the substantial showing of IATC. *Slack v. McDaniel*, 529 U.S., at 481; *Martinez supra*. The threshold inquiry does not require full consideration of the factual or legal bases supporting the claim. A defendant need only demonstrate "A substantial showing of the denial of a Constitutional right." 28 USC, § 2253 (c)(2); *Miller El v. Cockrell, supra*. The Petitioner demonstrates herein, that jurists of reason could disagree with the Lower Court's resolution of his case and that issues presented were adequate to deserve encouragement to proceed further. *Slack*, 529 U.S., at 484. As this Court has

acknowledge, "A defendant need not convince a Judge, or, for that matter, three Judges, that he will prevail, but must demonstrate that reasonable jurists would find the Lower Court's assessment of the constitutional claims debatable or wrong. *Miller-El*, 123 S.Ct., at 1039-40. That Petitioner received IATC, and constructively denied E.H. with no State appointed counsel on IATC claim, (A Structural Defect)., reasonable jurist could debate whether Lower Court's denial of IFP and COA was wrong, and issue as presented is deserving of encouragement to proceed further.

Respectfully submitted,

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CONCLUSION

The constitutional question involve in this petition for certiorari ask whether trial by IATC. raised Pro se on direct appeal. with no assistance of counsel. unresolved. and no counsel at initial-review collateral violates the right to counsel before the Courts and equal protection and due process of law under. U.S. Const., Amends. 6th, 14th

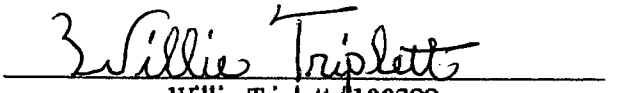
The Petitioner needs this Court to invoke its Supervisory Authority to answer the questions involving fundamental guarantees under the constitution that are substantial and of public importance, impacting on the integrity of judicial process. It is respectfully submitted that probable Jurisdiction should be noted, and in the alternative, grant Petitioner IFP, COA, with remand with instructions to appoint counsel and hold evidentiary hearing.

For this relief Petitioner continues to pray.

WHEREFORE, Movant prays Court grants Motion to Proceed In Forma Pauperis, and application for Certificate of Appealability pursuant to Federal Rule Civil Procedure, Rule 60(b)(6); 28 U.S.C., § 2253(C)(2)(3); *U.S.C.A. Const. Amend. 6, 14*, and order an Evidentiary Hearing or whatever other relief the Court deem just and proper.

Done this 13 day of July 2018, at Louisiana State Penitentiary, Angola, La. 70712.

Respectfully submitted,



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