

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 2018 Term

Edwin Lett — PETITIONER
(Your Name)

vs.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Edwin Lett #31076
(Your Name)

S.M.C.I. Unit D-1
(Address)

P.O. Box 1419
(City, State, Zip Code)

LEAKESVILLE, MISSISSIPPI 39451
(Phone Number)

(PRO SE PETITIONER)

QUESTIONS PRESENTED

ISSUE ONE (1)

WHETHER THREE JUDGE PANELS DECISIONS BY THE MISSISSIPPI SUPREME COURT ARE FINAL JUDGMENTS UNDER 28 U.S.C. SECTION 1257

ISSUE TWO (2)

WHETHER A CONSTRUCTIVE AMENDMENT OF THE PETITIONER'S INDICTMENT VIOLATED HIS SIXTH AMENDMENT RIGHT TO NOTICE AND THE FIFTH AMENDMENT RIGHT TO DUE PROCESS

ISSUE THREE (3)

WHETHER THE MISSISSIPPI SUPREME COURT HAS STRICTLY AND REGULARLY APPLIED A STATE PROCEDURAL BAR TO A CLAIM ABOUT A CONSTRUCTIVE AMENDMENT TO A INDICTMENT

ISSUE FOUR (4)

WHETHER THE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT FAILED TO PROPERLY INSTRUCT THE JURY

LIST OF PARTIES

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

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-11
REASONS FOR GRANTING THE WRIT	12-40
CONCLUSION.....	40

INDEX TO APPENDICES

APPENDIX A (Grand Jury Indictment)

APPENDIX B (State Court of Appeals decision)

APPENDIX C (Denial of Rehearing; Mandate)

APPENDIX D (July 15, 2015 order denying First
Post-Conviction petition)

APPENDIX E (August 13, 2015 order denying rehearing)

APPENDIX F (July 25, 2018 order denying SECOND
Post-Conviction petition)

Appendix G (August 17, 2018 order denying
Rehearing)

Appendix H (Motion and Brief Filed by the
State of Mississippi relating to
Similar Issues)

Table of Contents (continue)

Index To Appendices

Appendix I (Jury Instructions)

Appendix J (Jury Instructions)

Appendix K (Note From Jury)

Appendix L (Note From Jury)

Appendix M (Jury's Verdict)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BELL v State, 725 So2d 836,
855, (P57) (Miss. 1998) - - - - - 3, 26

BERLEY v State, 728 So2d 568,
571 (Miss. 1999) - - - - - 40

CHESNEY v State 105 So3d 498,
503 (P10) (Ms. Ct. App. 2015) - - - - - 39

DUGGARD v ADAMS 489 U.S. 401,

STATUTES AND RULES

28 U.S.C. Section 1257 - - - - - 12, 13, 19, 21

Section 99-39-7, Miss. Code OF 1972, AS AMENDED - - 15

Section 97-3-19(1)(A), Miss. Code OF 1972, AS AMENDED - 26

Section 97-3-19(1)(b), Miss. Code OF 1972, AS AMENDED - 26

OTHER

RULE 27 (H) MISS. RULES OF APPELLATE PROCEDURE - - 18, 21

SECTION 145-A AND 145-B OF THE
MISSISSIPPI CONSTITUTION - - - - - 14, 15

ARTICLE 3, SECTION 31 OF THE
MISSISSIPPI CONSTITUTION - - - - - 35

TABLE OF AUTHORITIES CITED (continued)

PAGE NUMBER

410 FN 6, 109 S.Ct. 1211,
1217 FN 6, 103 L.Ed.2d 435 (1989) — — — — 29-30

GOEMAN v WASHINGTON UNIVERSITY
316 U.S. 98, 62 S.Ct. 962,
86 L.Ed. 2d 1300 (1942) — — — — — 20

HARREL v STATE, 134 S03d 266
(Miss. 2014) — — — — — 37, 38, 39

HATHORN v LOVORN 457 U.S. 255, 263
100 S.Ct. 2421, 2426, 72 L.Ed.
2d 842 (1988) — — — — — 30

HUNTER v STATE 684 S02d 625
636 (Miss. 1996) — — — — — 39

JENKINS v STATE 232 S03d 167,
173 (Pa. Ct. App. 2017) — — — — 32

JOHNSON v UNITED STATES 520 U.S.
461, 469, 117 S.Ct. 1544, 137 L.
Ed. 2d 718 (1997) — — — — — 36

KOLBERG v STATE 829 S02d 29,
46 (Miss. 2002) — — — — — 37

TABLE OF Authorities Cited

(Continue)

PAGE NUMBER

LETT v STATE 902 S02d 630
(Ms. Ct. App. 2005)-----7

LOCAL 174 TEAMSTERS v LUCAS
Flare Company 369 U.S. 95, 98,
82 S. Ct. 571, 574, 7 L. Ed. 2d
593 (1963)-----19

MORTON v STATE, 246 S03d 895,
903-04, (Miss. 2017)-----32

NEER v U.S. 527 U.S. 1, 31, 119
S. Ct. 1827, 1844, 144 L. Ed. 2d
35 (1999)-----36, 37

POLLARD v STATE 932 S02d 82, 87,
(P11) (Ms. Ct. App. 2006)-----39, 40

ROGERS v STATE, 95 S03d 623,
632 (P30) (Miss. 2012)-----40

RAWLAND v STATE 42 S03d 507
(Miss. 2010)-----10

RUSSELL v STATE 312 S02d 422,
425 (Miss. 1975)-----17-18

TABLE OF Authorities Cited (continued)

PAGE NUMBER

SHAFER v STATE 740 S03d
273, 280 (Miss. 1998)-----39

Smith v State 149 S03d 1027
(Miss. 2014)-----10

Stirone v United States 361 U.S.
212, 80 S.Ct. 270, 4 L.Ed 2d
252 (1960)-----25, 26, 27, 29

United States v Lockhart, 844 F.3d
501, 515 (5th Cir. 2016)-----28, 29

United States v Miller 471 U.S.
130, 105 S.Ct. 1811, 85 L.Ed 2d
99 (1985)-----23

U.S. v OLANO 507 U.S. 725
(1991)-----30, 31

VALE v State 243 S03d
205, 210 (P19) (Ms. Ct. App. 2017)---31-32

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 25, 2018.
A copy of that decision appears at Appendix "F".

☒ A timely petition for rehearing was thereafter denied on the following date: August 17, 2018, and a copy of the order denying rehearing appears at Appendix "G".

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V, OF THE UNITED STATES
CONSTITUTION STATES: " NO PERSON SHALL
BE HELD TO ANSWER FOR A CAPITAL, OR
OTHERWISE IN FAMOUS CRIME, UNLESS ON
A PRESENTMENT OR INDICTMENT OF A
GRAND JURY NOR BE DEPRIVED OF
LIFE, LIBERTY OR PROPERTY, WITHOUT
DUE PROCESS OF LAW

Amendment VI, OF THE UNITED STATES
CONSTITUTION STATES: " IN ALL
CRIMINAL PROSECUTIONS, THE ACCUSED
SHALL ENJOY THE RIGHT TO A
SPEEDY AND PUBLIC TRIAL, BY AN
IMPARTIAL JURY

STATEMENT OF THE CASE

ON OR ABOUT October 18, 2002
THE PETITIONER, EDWIN DARRELL
LETT (HERE IN REFERRED TO AS
LETT) WAS INDICTED BY THE
GRAND JURY OF JACKSON County,
MISSISSIPPI. (SEE Indictment,
EXHIBIT " A ").

According to THE ATTACHED
INDICTMENT, ON OR ABOUT
DECEMBER 2, 2001 IN JACKSON
County, MISSISSIPPI LETT DID
WILLFULLY, FELONIOUSLY AND
WITHOUT THE AUTHORITY OF LAW
KILL AND MURDER TIMOTHY

DICKERSON A HUMAN BEING, WITH
DELIBERATE DESIGN TO EFFECT
THE DEATH OF TIMOTHY
DICKERSON!

During July 28 through
30 OF 2003, LETT WAS TRIED
AND CONVICTED OF MURDER BY
A JURY OF HIS PEERS. LETT
WAS SENTENCED TO A TERM OF
LIFE IMPRISONMENT.

LETT APPEALED HIS CONVICTION
AND SENTENCE TO THE MISSISSIPPI
COURT OF APPEALS.

ON DIRECT APPEAL, LETT RAISED

1
MORE SPECIFIC FACTS THAT SUPPORT
THE ISSUES IN THIS CASE WILL BE
FULLY OUTLINED LATER IN THIS PETITION
FOR WRIT OF HABEAS CORPUS.

THE FOLLOWING grounds: (1) WHETHER THE JURY VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE (2) WHETHER THE TRIAL COURT ERRED IN GRANTING THE STATE'S JURY INSTRUCTION S-2, SUCH AN INSTRUCTION BEING A CHECK-OFF LIST BOX STATEING THE TESTIMONY OF THE SUSPECT WITNESSES (3) WHETHER THE TRIAL COURT ERRED IN GRANTING THE STATE'S JURY INSTRUCTION S-4 (4) WHETHER THE TRIAL COURT ERRED IN GRANTING THE STATE'S JURY INSTRUCTION OF MANSLAUGHTER AND (5) WHETHER THE TRIAL COURT ERRED IN REFUSING THE

DEPENDANTS JURY TRIAL
DEFINING REASONABLE DOUBT.

THE STATE APPEALS COURT DENIED
LETT'S APPEAL ON MARCH 1, 2005.
(SEE EXHIBIT - "B") SEE ALSO
LETT V STATE 902 S02D 630
(MISS. CT. APP. 2005).

A PETITION FOR REHEARING
WAS DENIED ON MAY 24, 2005
(SEE EXHIBIT - "C", MANDATE FROM
THE STATE COURT OF APPEALS).

LETT FAILED TO SEEK FURTHER
DISCRETIONARY REVIEW IN STATE
COURT BY FILING A PETITION
FOR WRIT OF HABEAS IN THE
MISSISSIPPI SUPREME COURT.

TEN (10) YEARS LATER ON

April 30, 2015 Lett Filed His First post-conviction petition with the State Supreme Court. Lett argued that he had an illegal sentence, that the evidence was insufficient to sustain a murder conviction, claims of actual innocence and newly-discovered evidence. Also, a ineffective assistance of counsel claim.

ON July 15, 2015 the State Supreme Court denied Lett post-conviction relief. (SEE ORDER, EXHIBIT - "D"). ON August 12, 2015 the State Supreme Court denied Lett's motion for reconsideration. (SEE EXHIBIT - "E")

THREE (3) YEARS LATER, ON JUNE 14, 2018 LETT FILED HIS SECOND POST-CONVICTION PETITION WITH THE STATE SUPREME COURT. LETT RAISED THE FOLLOWING ISSUES: (1) THE TRIAL COURT ERRED BY GIVING JURY INSTRUCTION S-4, AS IT ALLOWED A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT (2) THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO PROPERLY INSTRUCT THE JURY AS TO "MALICE AND WITH DELIBERATE DESIGN TO EFFECT DEATH" (3) THE EVIDENCE IS INSUFFICIENT TO SUPPORT A VERDICT OF GUILTY FOR MURDER AND THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT

OF THE EVIDENCE.²

ON July 25, 2018 A THREE JUDGE PANEL OF THE STATE SUPREME COURT DENIED LETT'S post-conviction petition. (SEE ORDER, EXHIBIT- "F")

ON August 9, 2018 LETT FILED A motion FOR RE HEARING. LETT ARGUED THAT THE STATE'S post-conviction statute MANDATE A QUORAN OF JUSTICES TO REVIEW post-conviction petitions. THAT THE MISSISSIPPI CONSTITUTION MANDATE A QUORAN CONSIST OF FIVE (5) JUSTICES.³

² LETT ALSO ARGUED THAT HIS post-conviction petition RAISED FUNDAMENTAL CONSTITUTIONAL RIGHT ISSUES THAT EXCEPTED HIM FROM THE TIME BAR, RES JUDICATA AND OTHER SUCCESSIVE WRIT BARS UNDER THE post conviction statute. SEE RAWLANS V STATE 42 SO3d 507 (MISS. 2010); SMITH V STATE 149 SO3d 1027 (MISS. 2014).

ON August 17, 2018 the State Supreme Court denied Lett's motion for reconsideration. (see order, exhibit - "G")

3 Attached as exhibit - "H" to this petition for writ of certiorari is a brief filed by the Mississippi Attorney General Office which make the same arguments raised in Lett's motion for reconsideration.

REASONS FOR GRANTING THE PETITION

Issue ONE (1)

WHETHER THREE JUDGE PANELS
DECISIONS BY THE MISSISSIPPI SUPREME
COURT ARE FINAL JUDGMENTS UNDER
28 U.S.C. SECTION 1257

LETT IS RESPECTFULLY REQUESTING
THAT THIS COURT RESOLVE A
CONTROVERSY THAT AFFECTS
HUNDRED OF THOUSANDS OF STATE
PRISONERS THROUGHOUT THE COUNTRY
WHO FILE STATE POST-CONVICTION
PETITIONS.

AT ISSUE IS WHETHER DECADES
OF THREE JUDGE PANEL DECISIONS
RENDERED BY THE STATE HIGHEST
COURTS ARE FINAL JUDGMENTS

PURSUANT TO 28 U.S.C. SECTION 1257.

IN MISSISSIPPI, A STATE POST-CONVICTION PETITION FILED IN THE STATE SUPREME COURT IS REVIEWED REGULARLY BY A THREE JUDGE PANEL.⁴ THE ONLY EXCEPTIONS ARE DEATH PENALTY CASES AND RARE CASES THE COURT DECIDE EN BANC.

LETT MUST NOTE THAT THE MISSISSIPPI POST CONVICTION STATUTE SPECIFICALLY STATES THAT A POST-CONVICTION MOTION SHOULD BE

4 THE MISSISSIPPI CONSTITUTION REQUIRE THE STATE SUPREME COURT BE COMPOSED OF A TOTAL OF NINE (9) JUSTICES.

PRESENTED TO A QUORAN OF THE JUSTICES OF THE SUPREME COURT OF MISSISSIPPI. SEE SECTION 99-39-7, MISSISSIPPI CODE OF 1972, AS AMENDED.

THE RELEVANT QUESTION IS WHAT CONSTITUTE A QUORAN AND WHETHER PERMITTING A THREE JUDGE PANEL TO DECIDE A POST-CONVICTION PETITION PASSES CONSTITUTIONAL MUSTER.

SECTION 145-B OF THE MISSISSIPPI CONSTITUTION PROVIDES: THAT THE SUPREME COURT SHALL CONSIST OF NINE JUDGES, THAT IS TO SAY, OF THREE JUDGES IN ADDITION TO THE SIX PROVIDED FOR

by Section 145-A OF this
Constitution, AND ANY FIVE
OF WHOM WHEN CONVENED SHALL
constitute A QUORAN.

Thus, pursuant to Section
145-B, A QUORAN REQUIRES
FIVE Justices. A PLAIN
READING OF MISSISSIPPI CODE
ANNOTATED SECTION 99-39-7
IN CONJUNCTION WITH SECTION
145-B OF THE MISSISSIPPI
CONSTITUTION, MANDATES THAT
STATE POST-CONVICTION PETITIONS
BE PRESENTED TO A QUORAN
OF FIVE Justices.

NO OTHER TYPE OF CASES
PRESENTED TO THE MISSISSIPPI

SUPREME COURT IS DISPOSED OF WITHOUT CONSIDERATION OF THE ENTIRE COURT. THIS INDICATE THAT POST-CONVICTION PETITIONS SHOULD BE REVIEWED BY THE ENTIRE COURT.

WHILE THE MISSISSIPPI SUPREME COURT SITS IN THREE JUDGE PANELS FOR CONSIDERATION OF DIRECT APPEALS, THE DECISIONS ARE CIRCULATED TO THE FULL COURT FOR A VOTE. EVEN PETITIONS FOR WRIT OF CERTIORARI, WHICH ARE ASSIGNED TO ONE JUSTICE FOR CONSIDERATION, MUST ULTIMATELY BE CIRCULATED TO THE FULL COURT

FOR A VOTE AND REQUIRE A
VOTE OF FOUR TO BE SUFFICIENTLY
GRANTED.

IN A DECISION UP HOLDING
THE CONSTITUTIONALITY OF THE
DIVISION PROCEDURE, THE
MISSISSIPPI SUPREME COURT NOTED,
AS JUSTIFICATION FOR ITS
PRACTICE THAT " ALL PETITIONS
FOR RE HEARING ARE AD JUDGED
BY THE FULL COURT; ALSO, NO
WRITTEN OPINION IS HANDED
DOWN UNTIL EACH OF THE NINE
JUDGES HAS READ IT AND EITHER
CONCURRED THEREIN OR NOTED
HIS DISSSENT". SEE RUSSELL V
STATE, 312 SO2D 400, 425

(Miss. 1975) 5

Ironically, the State of Mississippi is arguing the same facts and laws provided by Lett. In a unrelated case, the State filed a motion and brief in which the State argued that these judge panels violated state law and the Mississippi constitution. (see exhibit - "H", State's motion and brief collectively)

5 EACH TIME A THREE JUDGE PANEL DENIED Lett post-conviction relief, HE FILED A MOTION FOR REHEARING. EACH TIME A JUSTICE OF THE STATE SUPREME COURT DENIED A REHEARING CITING RULE 27(H), MISSISSIPPI RULES OF APPELLATE PROCEDURE. (ALSO SEE ORDERS DENYING REHEARING, EXHIBITS - "C" AND "G".)

THE STATE OF MISSISSIPPI DOES NOT
DISPUTE THAT THREE JUDGE PANELS
VIO LATE STATE LAW AND THE
MISSISSIPPI CONSTITUTION.

IN LOCAL 174, TEAMSTERS
V LUCAS FLOUR COMPANY, 369
U.S. 95, 98, 82 S.Ct. 571,
574, 7 L.Ed. 2d 593 (1963),
THIS COURT RULED THAT A
DECISION MADE BY THE FIVE OF
THE NINE MEMBERS OF THE
SUPREME COURT OF WASHINGTON
WAS A DECISION MADE BY THE
HIGHEST COURT OF THE STATE IN
WHICH A DECISION COULD BE HAD.
THIS COURT RELIED ON 28 U.S.C.
SECTION 1257 AND GORMAN V

WASHINGTON UNIVERSITY, 316 U.S.
98, 62 S.Ct. 962, 86 L.Ed.
1300 (1942)

In LOCAL 174, SUPRA, this
Court RELIED ON THE CONSTITUTION
AND STATUTE OF THE STATE OF
WASHINGTON.

THE CONSTITUTION AND STATUTE
FOR THE STATE OF MISSISSIPPI
REQUIRE A QUORUM CONSISTING
OF FIVE AND NOT THREE JUSTICES.⁶

Let it also be noted that these
JUDGE PANEL DECISIONS MADE BY THE
MISSISSIPPI SUPREME COURT ARE NOT

⁶ THE STATE'S motion attached as exhibit - "H"
to this petition for writ of certiorari is
still pending before the MISSISSIPPI
SUPREME COURT

REVIEWED BY THE ENTIRE COURT.

ALSO, RULE 27(H), MISSISSIPPI RULES OF APPELLATE PROCEDURE (M. R. A. P.) PROHIBIT A MOTION FOR RECONSIDERATION OR EN BANC REVIEW WHEN A POST-CONVICTION PETITION IS DENIED. RULE 27(H) M. R. A. P. ONLY APPLIES TO THREE JUDGE PANEL DECISIONS.

LETT HAS PRESENTED A JURISDICTIONAL QUESTION BEFORE THIS COURT. THERE IS NO PROCEDURAL BARS TO PREVENT THIS COURT FROM DECIDING WHETHER IT HAS JURISDICTION TO REVIEW THIS APPEAL UNDER 28 U.S.C. SECTION 1257.⁷

ISSUE TWO(2)

WHETHER A CONSTRUCTIVE
AMENDMENT OF THE PETITIONER'S
INDICTMENT VIOLATED HIS SIXTH
AMENDMENT RIGHT TO NOTICE
AND THE FIFTH AMENDMENT
RIGHT TO DUE PROCESS

ISSUE THREE(3)

WHETHER THE MISSISSIPPI SUPREME
COURT HAS STRICTLY AND REGULARLY
APPLIED A STATE PROCEDURAL BAR
TO A CLAIM ABOUT A CONSTRUCTIVE
AMENDMENT TO A INDICTMENT

A CONSTRUCTIVE AMENDMENT OF
THE INDICTMENT OCCURS WHEN THE
PROOF AND INSTRUCTIONS

BROADEN THE GROUNDS UPON

WHICH THE DEFENDANT MAY BE

7 LETT WOULD NOTE THAT IF THIS COURT
DENY HIS PETITION FOR WRIT OF
CERTIORARI WITHOUT COMMENT, THAT
WOULD SUGGEST THE COURT DID HAVE
JURISDICTION TO DECIDE THIS CASE.

FOUND GUILTY OF THE OFFENSE
CHARGED, SO THAT THE DEFENDANT
MAY BE CONVICTED WITHOUT
PROOF OF THE ELEMENTS ALLEGED
BY THE GRAND JURY IN ITS
INDICTMENT. SEE UNITED STATES
V. MILLER, 471 U.S. 130, 105
S. Ct. 1811, 85 L. Ed. 2d 99 (1985)

LETT'S INDICTMENT IS ATTACHED TO
THIS PETITION. THE INDICTMENT
SPECIFICALLY STATES THAT LETT
WILLFULLY, FELONIOUSLY AND
WITHOUT THE AUTHORITY OF LAW
KILL AND MURDER TIMOTHY

8 IF THE COURT REJECTS ISSUE ONE(C),
SUPRA, THE COURT HAS JURISDICTION TO
REVIEW THE OTHER ISSUES RAISED IN
THIS PETITION.

DICKERSON, A HUMAN BEING, WITH
DELIBERATE DESIGN TO EFFECT THE
DEATH OF TIMOTHY DICKERSON.

ATTACHED AS EXHIBIT - "I" IS
THE STATE'S JURY REMENTS
INSTRUCTION SUBMITTED TO THE
JURY. THE JURY INSTRUCTION
WAS SUBMITTED WITHOUT ANY
OBJECTION FROM DEFENSE COUNSEL.

THE STATE JURY REMENTS
INSTRUCTION SET FORTH BOTH REMENTS
OF DELIBERATE DESIGN MURDER AND
DEPRAVED HEART MURDER.

THE CONCEPT OF CONSTRUCTIVE
AMENDMENT OF AN INDICTMENT
IS FOUNDED LARGELY ON
STIRONE V UNITED STATES, 361

U.S. 212, 80 S.Ct. 270, 4 L.Ed. 2d 252 (1960). In Shiomi, this Court ruled that where crime charged was a felony, the Fifth Amendment requires prosecution to be begun by indictment, Shiomi, 361 U.S. 19.⁹ At 215.

After an indictment has been returned, it's charge may not be broadened through Amendment except by grand jury itself, Shiomi 361 U.S. At 216-17.

⁹ Lett maintain that the also was deprived of his Sixth Amendment right under the United States Constitution to be informed of the nature and cause of the accusation against him.

A Court cannot permit a defendant to be tried on charges that are not made in the indictment against him. Stirone, 361 U.S. At 217

Letta was indicted under section 97-3-19 (1) (A) Mississippi Code of 1972, as amended. Section 97-3-19 (1) (A) establish the crime of deliberate design murder only.

The crime of depraved heart murder is established in section 97-3-19 (1) (b) Mississippi Code of 1972, as amended.

By including both sections 97-3-19 (1) (A) and 97-3-19 (1) (b)

IN THE JURY ELEMENTS INSTRUCTION,
THE STATE TRIAL COURT MATERIALLY
MODIFIED AN ESSENTIAL ELEMENT OF
THE INDICTMENT.

IN A DELIBERATE DESIGN MURDER,
ONE OF THE ELEMENTS THE STATE
MUST PROVE IS "MALICE." IN A
DEPRAVED HEART MURDER, THE
ESSENTIAL ELEMENT IS "WITHOUT
MALICE".

THE FIFTH CIRCUIT COURT OF APPEALS
HAS INTERPRETED STIERNE MANY TIMES.
PURSUANT TO STIERNE THE APPEALS COURT
HAS RULED THAT WHEN THE INDICTMENT
ALLEGES A PARTICULAR SET OF FACTS
AS FORMING THE BASIS FOR THE
DEFENDANT'S VIOLATION OF A STATUTE,

but the trial court allows evidence of other facts not alleged in the indictment to form the basis of the jury verdict, the appeals court finds a constructive amendment. See. United States v Lockhart, 844 F.3d 501, 515 (5th Cir. 2016)

Left was indicted for deliberate design murder but the jury was instructed on both deliberate design murder and depraved heart murder. Depraved heart murder was not alleged in the indictment and was used to form the basis of the jury verdict.

Based on the foregoing arguments, this court must find a

CONSTRUCTIVE AMENDMENT TO THE
INDICTMENT UNDER SHONE AND
LOCKHART, SUPRA.

THE MISSISSIPPI SUPREME COURT
DENIED LETT'S CLAIMS AS TIME
BARRED AND BARRED BY RES JUDICATA.
LETT WILL ESTABLISH THE STATE
SUPREME COURT DOES REGULARLY AND
STRICTLY APPLY PROCEDURAL BARS.

THIS COURT HAS RULED THAT A
PROCEDURAL RULE MUST BE ADEQUATE.
THE COURT HAS DEFINED THIS CONCEPT
OF ADEQUACY TO INCLUDE A STATE
PROCEDURAL ground THAT IS STRICTLY
OR REGULARLY APPLIED EVEN HANDLED
TO THE VAST MAJORITY OF
SIMILAR CLAIMS. SEE: DUGGARD

Adams, 489 U.S. 401, 410^{nb}, 109
S.Ct. 1211, 1217^{nb}, 103 L.Ed.2d
435 (1989)

In Hathorn v Lowery, 457 U.S.
255, 263, 102 S.Ct. 2421, 2426,
72 L.Ed.2d 824 (1988), the Court
ruled that "State Courts may not
avoid deciding Federal issues by
invoking procedural rules that do not
apply evenhandedly to all
similar cases".

This Court has ruled that a
reviewing court may grant relief for
plain error even if the error was
not raised and preserved at
trial. See U.S. v Olano, 507 U.S.
725 (1991). That plain error is

"CLEAR OR OBVIOUS" AND AFFECTS
THE DEFENDANT'S "SUBSTANTIAL RIGHTS".

OLANO, 507 U.S. AT 734-35.

AS EARLY AS 1998, THE
MISSISSIPPI SUPREME COURT HAS
RECOGNIZED THAT PLAIN ERROR APPLY
TO ISSUES PERTAINING TO CONSTRUCTIVE
AMENDMENT OF THE INDICTMENT.

SEE BELL V STATE, 725 S02D 836,
855 (P57)(MISS. 1998).

IN A VERY RECENT CASE, THE
MISSISSIPPI COURT OF APPEALS FOUND A
DEFENDANT INDICTMENT WAS
CONSTRUCTIVELY ALTERED BY THE JURY
INSTRUCTION DESPITE A PROCEDURAL
BAR. SEE VALE V STATE, 243
S03D 205, 210 (P19)(MS. Ct. App.

2017)

IN JENKINS V STATE, 232 SO3d 167, 173 (PQ5)(MS. Ct. App.), the Court ruled that the constructive amendment of the indictment was not procedurally barred based on a due process right. Likewise, in MORTON V STATE, 246 SO3d 895, 903-04 (MISS. 2017), the Court ruled that REVERSAL IS AUTOMATIC because the defendant may have been convicted on a ground not charged in the indictment.

ISSUE IV

WHETHER THE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT FAILED TO PROPERLY

Instruct the Jury.

LETT WAS INDICTED SPECIFICALLY FOR THE CRIME OF DELIBERATE DESIGN MURDER. THE STATE SUBMITTED TWO(2) JURY INSTRUCTIONS AT TRIAL THAT DEFINED A LESSER CRIME OF MANSLAUGHTER. (SEE JURY INSTRUCTIONS COLLECTIVELY AS EXHIBIT "J")

DURING DELIBERATIONS, THE JURY SENT THE TRIAL JUDGE A NOTE REQUESTING GUIDANCE ON THE LEGAL DEFINITION OF "MALICE" AND "WITH DELIBERATE DESIGN TO EFFECT DEATH". THE JURY ALSO ASKED WHAT MUST THEY DO IF THEY AGREE THAT

THE ACCUSED IS GUILTY OF KILLING
THE VICTIM, BUT NOT AGREE ON
WHETHER MURDER OR MANS LAUGHTER.
(SEE JURY'S NOTE, EXHIBIT "K").

THE TRIAL JUDGE WROTE ON THE
NOTE FROM THE JURY THAT THE
COURT WAS NOT ALLOWED TO DEFINE
THESE TERMS. THAT ANY VERDICT
MUST BE UNANIMOUS. THE JURY
NOTE WAS NOT SHARED WITH DEFENSE
COUNSEL OR THE PROSECUTOR AT TRIAL
AND IS NOT MENTIONED IN THE TRIAL
TRANSCRIPT.

LATER ON IN DELIBERATIONS, THE
JURY SENT ANOTHER NOTE ASKING
DID THEY HAVE THE OPTION OF
RETURNING THE NEXT DAY FOR

deliberations. (SEE JURY'S SECOND NOTE, EXHIBIT "L"). IT WAS NOT UNTIL THE NEXT DAY THAT THE JURY FOUND LEFT GUILTY OF MURDER. (SEE JURY'S VERDICT, EXHIBIT - "M")

THE SIXTH AMENDMENT PROVIDES: "IN ALL CRIMINAL PROSECUTION, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY". ARTICLE 3, SECTION 31 OF THE MISSISSIPPI CONSTITUTION USES STRONGER LANGUAGE WHICH PROVIDES: "THE RIGHT OF TRIAL BY JURY SHALL REMAIN INVIOLETE."

THE RIGHT TO BE TRIED BY A JURY IN CRIMINAL CASES

obviously means the right to have
a jury determine whether the
defendant has been proved guilty
of the crime charged. SEE:

NEDEK v U.S. 527 U.S. 1, 31,
119 S. Ct. 1827, 1844, 144 L.
Ed. 2d 35 (1999)

omitting a ~~element~~ can be
easily analogized to improperly
instructing the jury on the
element, an error that is
subject to harmless error
analysis. SEE NEDEK, 527 U.S.
at 2, 119 S. Ct. at 1830.

(citing JOHNSON v United States,
520 U.S. 461, 469, 117 S. Ct.
1544, 137 L. ~~Ed~~ 2d 718 (1997))

IN MISSISSIPPI, THE TRIAL COURT IS RESPONSIBLE FOR MAKING SURE THE JURY IS "FULLY AND PROPERLY INSTRUCTED ON ALL THE ISSUES RELEVANT TO THE CASE!" SEE HARRELL V STATE, 134 SO3d 266, 270 (P14) (MISS. 2014) (CITING KOLBERG V STATE, 829 SO2d 29, 46 (MISS. 2002)).

IN HARRELL, THE MISSISSIPPI SUPREME COURT REJECTED THIS COURT'S DECISION IN NEDER, SUPRA, THAT A FAILURE TO INSTRUCT THE JURY CLAIM WAS SUBJECTED TO A HARMLESS ERROR ANALYSIS. IN HARRELL, THE MISSISSIPPI SUPREME COURT NOTED ONCE AGAIN THAT

MISSISSIPPI HAS ITS OWN CONSTITUTION
AND USES STRONGER LANGUAGE IN
REQUIRING A DEFENDANT'S RIGHT TO
A JURY TRIAL. SEE: HARRELL,
134 S03d AT 271 (P17)

IN HARRELL, THE MISSISSIPPI
SUPREME COURT NOTED THAT THE RIGHT
TO A JURY TRIAL WAS SO
IMPORTANT TO OUR DEMOCRATIC
FORM OF GOVERNMENT THAT THE
FAILURE TO INSTRUCT THE JURY AS
TO A CHARGED CRIME WAS NEVER
HARMLESS ERROR, HARRELL, 134 S03d
AT 275

FINALLY, THE MISSISSIPPI SUPREME
COURT APPLIED A PROCEDURAL BAR TO
THIS CLAIM. THE STATE SUPREME

Court HAS ALWAYS REJECTED A
PROCEDURAL BAR WHEN THE TRIAL JUDGE
FAILS TO INSTRUCT THE JURY ON
THE "ESSENTIAL" ELEMENTS OF THE
CRIME. SEE HARRELL, 134 S03d AT
270 (P14); SHAFER V STATE, 740
S02d 273, 282 (MISS. 1998);
HUNTER V STATE, 684 S02d 625,
636 (MISS. 1996)¹⁰

ALSO, FAILURE TO INSTRUCT THE
JURY ON THE ESSENTIAL ELEMENTS
OF THE CRIME IS "PLAIN ERROR".

SEE CHESNEY V STATE, 165 S03d
498, 503 (P10) (CITING POLLARD V
STATE, 932 S02d 82, 87 (P11) (MS.

¹⁰ MALICE AND WITH DELIBERATE DESIGN TO
EFFECT DEATH ARE ELEMENTS OF THE
CHARGED CRIME

4. App. 2006); Rogers v State,
95 So3d 623, 632 (P30) (Miss.
2012); (citing Berry v State,
728 So2d 568, 571 (Miss. 1999)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Edwin Lett

Date: October 11, 2018