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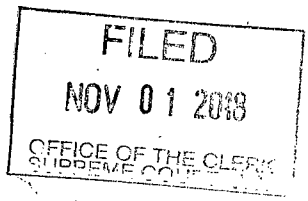

IN THE

SUPREME COURT OF THE UNITED STATES

Charles K. James, Jr. — PETITIONER
(Your Name)

vs.

Jeffrey Kruger — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles K. James, Jr.
(Your Name)

United States Penitentiary-Terre Haute
P.O. Box 33
(Address)

Terre Haute, IN 47808
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1.)THE IOWA STATE COURT DECISION IN STATE V. HEEMSTRA, THAT IT IS AN INTERPRETATION OF THE STATUTE IS CONTRARY TO THE DECISION IN STATE V. GOOSMAN, THAT HEEMSTRA INVOLVES A CHANGE IN LAW AND NOT A MERE CLARIFICATION. THE DECISION IN STATE V. HEEMSTRA IS ALSO CONTRARY TO CLEARLY ESTABLISHED UNITED STATES SUPREME COURT DECISION(S) IN UNITED STATES V. BOUSLEY AND RIVERS V. ROADWAY EXPRESS, INC. REGARDING IT'S STATUTORY INTERPRETATION"S DEGREE OF RETROACTIVITY AS IT SPRUNG FROM A CONSTITUTIONALLY DEFECTIVE FELONY MUDER JURY INSTRUCTION THAT IN ESSENCE VIOLATED THE FOURTEENTH AMENDMENT GUARANTEE TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW. HENCE, MR. JAMES WAS DENIED THESE CONSTITUTIONAL GUARANTEES, THUS THIS DECISION RESULTED IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

2.)MR. JAMES' FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED BECAUSE THE INSTRUCTIONS GIVEN AT HIS TRIAL, AND THE GENERAL VERDICT FORM, PERMITTED THE JURY TO CONVICT HIM OF FIRST-DEGREE MURDER AND/OR FELONY MURDER WITHOUT A FINDING AND/OR A SEPERATE FINDING OF THE ESSENTIAL ELEMENTS ESTABLISHING FIRST-DEGREE MURDER(WILLFULLY, DELIBERATELY,PREMEDITATEDLY,AND WITH SPECIFIC INTENT) NOR A FINDING OF THE PREDICATE OFFENSE ESTABLISHING FELONY MURDER (WILLFUL INJURY OR TERRORISM). THUS, POSSIBLY RESTING HIS CONVICTION ON A PREDICATE FELONY WHICH IS NOT A FORCIBLE FELONY(TERRORISM). THEREFORE, IT IS IMPOSSIBLE TO DETERMINE WHAT THE JURY UNANIMOUSLY AGREED MR. JAMES IS GUILTY OF, OR IF HIS CONVICTION RESTS UPON A THEORY CONTAINING LEGAL ERROR, RESULTING IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

3.)THE UNITED STATES DISTRICT COURT'S "DISCUSSION OF APPLICABLE LAW" RULING ON MR. JAMES' PETITION STANDS IN CONTRADICTION TO WHAT THE UNITED STATES DISTRICT COURT ALLOWED IN DEJONG V. NEBRASKA UNDER 28 U.S.C § 2254(d)(1). AND THE "FACTUAL PREDICATE" ASPECT OF THAT RULING DECLARING THE IOWA COURT DECISION IN STATE V. HEEMSTRA TO BE "A CHANGE IN THE INTERPRETATION OF LAW" IS NOT ONLY A RENDERING CONTRARY TO THAT IN STATE V. GOOSMAN, IT ALSO SETS FORTH AN INNOVATIVE AND UNPRECEDENTED ADJUDICATION BY A HIGHER COURT POTENTIALLY SETTLING THE DISAGREEMENT AND SUPPORTING MR. JAMES' ARGUEMENT THAT HEEMSTRA IS MERELY STATUTORY INTERPRETATION AND IS THUS AUTOMATICALLY "FULLY" RETROACTIVE UNDER RIVERS AND BOUSLEY. THE CONTRADICTIONS BETWEEN THE COURTS AND CASES HAVE RESULTED IN A DENIAL OF MR. JAMES' FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

4.)MR. JAMES' PETITION IS ENTITLED TO EQUITABLE TOLLING UNDER BOTH COLEMAN V. THOMPSON AND HOLLAND V. FLORIDA. HE IS ALSO ENTITLED TO EQUITABLE TOLLING UNDER COULTER V. KELLEY AND EGERTON V. COCKRELL

LIST OF PARTIES

[X] 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:

Counsel For Jeffrey Kruger;
Aaron Rogers
Assistant Attorney General
Iowa Department of Justice
1305 E. Walnut st.,Second Floor
Des Moines, Iowa 50319

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INDEX TO APPENDICES

Mr. James cannot provide the decision mentioned by the United States District Court in it's order dismissing Mr.James' petition, i.e. James v. State, 2009 WL 1492701.His brotha Shawn James tried to purchase a copy of said decisiomn, along with the decision from the Iowa Supreme Court which allowed Mr. James to proceed on a late notice of appeal in 2015, but the court could not find either of them. He attempted this twice, what he did recieve was Mr. James' "Motion For Reopening the Time To File An Appeal(and Affidavit In Support Thereof)" and the "Notice Of Appeal" itself, both of which he has enclosed with the reciept the courts issued to his brotha on said purchase.He submitts these as Appendix H.

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (cont.)

STATUTES AND RULES

UNITED STATES CONSTITUTIONAL PROVISIONS

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

[X] For cases from **federal courts:**

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at _____; 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 _____ 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was JULY 3, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUGUST 29, 2018, and a copy of the order denying rehearing appears at Appendix C.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including JANUARY 13, 2018 (date) on NOVEMBER 13, 2018 (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 _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I; Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacebly to assemble, and to petition the Government for a redress of grievances.

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 law; nor deny to any person within its jurisdiction the equal protection of the laws.

Iowa Code section 707.2; Under Iowa Codesection 707.2; a person commits murder in the first degree when the person commits murder under any of the following circumstances:

1. The person willfully, deliberately, and with premeditation kills another person.
2. The person kills another person while participating in a forcible felony.

A forcible felony is defined by section 702.11 as "any felonious child endangerment, assault, murder, sexual abuse, kidnapping, 'robbery, arson in the first degree, or burglary in the first degree." The combinations of sections 707.2(2) and 2702.11 constitute what is commonly known as the "felony murder" rule.

Iowa Code section 822.3;provides that an application for postconviction relief must be filed within three years from the date the conviction or decision is final, or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.

STATEMENT OF THE CASE

On Nov. 11, 1999, Mr. James was charged with Premeditated Murder and Felony Murder while participating in the forcible felonies of Willful injury or Terrorism'. On April 17, 2001, he was found guilty and sentenced to Life without parole.

In June of 2000, Mr. James filed a direct appeal. His conviction was confirmed on or about July 18, 2001. Mr. James timely appealed to the Iowa Supreme Court. While that appeal was still pending, Mr. James filed a postconviction action in an effort to 'stop the clock' on his one year limitations, due to a lack of understanding of the AEDPA and Iowa Code Statute of limitations. On Aug. 31, 2001, the court dismissed the action and instructed Mr. James to "wait" until he recieved a "notice of Decision" on his appeal before filing any other action because he could only have one pending at a time. In Sept. of 2001 Mr. James and a number of other inmates were placed in the Death Row Building. While there, his appeal was decided, however, he never recieved a copy of the Notice of decision because the officers working that unit were issued strict "Post Orders" not to give the inmates in that unit "anything" because "they didnt have nothing coming". Mr. James still to this day was never given that notice.On Oct. 31,2001 procedendo was issued. Thus, he missed certiorari deadline.

On April 22, 2003 Mr. James filed a postconviction action after learning from another inmate his appeal denial was in the newspaper, which was three months passed the one year limitations he had to file for Habeas Corpus, as he hadnt learned of the decision until the end of February of 2003. On Dec. 18, 2004, Mr. James' attorney filed a supplemental petition, and on Sept. 9 2004, ahearing was held on the issues. Mr. James' action was subsequently denied and an appeal was filed on Dec. 14, 2004. On Sept. 11, 2006, The Iowa Supreme Court dis-

missed Mr. James' appeal.

Mr James then filed another postconviction action om Oct.-2, 2006, seeking relief on "a new ground of fact or law", under the-State v. Heemstra decision.A hearing was held on Nov. 19. 2007, during which the court allowed Mr. James' attorney to file an amendment thereto on the "Jones Affidavit" under Newly Discovered Evidence.On Dec. 18, 2007 his action was dismissed. Notice of appeal was filed on Jan. 15,2008, the court affirmed on the issue of a new ground of fact or law, but reversed and remanded with respect to the issue involving the statute of limitations. Mr. James' action was denied on Dec. 10, 2009, and on Dec. 16,2009, he appealed to the Supreme Court. The court dismissed his petition and procedendo was issued on June 10, 2011.Mr. James filed that action within a month and a half of Heemstra and days within the denial of his last action in 2006, and because this action was amended, and then reveresed and remanded in part, it ran on until 2011, for five years.

Mr. James then filed another postconviction on june27,2011, which was dismissed on Jan 10,2012; and followed up with another on Aug. 28, 2012, which was dismissed on Nov. 12, 2013. Both of those actions were filed in an effort to exhaust state remedies regarding issues Mr. james hadnt and could not raise before because he did not have to the state law. He had been transferred to federal prison to be housed as a state prisoner and still no arrangements were made for him to recievethe essential materials so he could challenge his conviction and confinement.At this point he had been in the F.B.O.P. 5 years.

On March 17, 2014, he filed a postconviction action seeking relief under the 2013 Nguyen(state) ruling, which allowed Nguyen to proceed on the very same grounds the court said james could not on Heestra .His action was denied on aug March 6,2017.

REASONS FOR GRANTING THE PETITION

Mr. James set out his reasons why the State procedural default,as well as the federal procedural default should be excused. He has made a substantial showing of "cause" by explaining he did not recieve the notice of decision(s) on more than one occassion and has provided an affidavit in support thereof(see exhibit; affidavit of Adrian Tomas), which caused him to miss deadlines;He has been housed in administrative segregation , and condemned Death Row units which have no law library at all; He was transferred into federal custody and no arrangements have been made for him to recieve state law in order to challenge his conviction still to this day-thus he has no access to state law, and thus hasnt been afforded his "one full year of unobstructed time" to prepare for Habeas corpus; his case was also dismissed for the courts inability to retrieve transcripts from the clerk of court for an entire year.These circumstances are well beyond Mr. James' cotrol and must be considered "extraordinary circumstances" establishing both "cause and prejudice with respect to Mr. James' failure to timely file, because"objective factor"...impeded his efforts to comply. The"actual prejudice" here is that Mr. James is proceduralky barred.

It would be a miscarriage of justice for him to die in prison because his United States constitutional rights were violated and his conviction of felony murder rest upon a felony that is not even a forcible felony, and the jury has not found beyond a reasonable doubt "seperately'" each and every element essential to proving murder in the first degree.

There are way too many state cases herein mentioned which all contradict one another and lend a hazy or vague meaning to adjudictations.

Those cases also contradict federal law, and the adjucators have on some of those occassions made renderings of what they call "new law" as if they were the legislature themself wielding tbe power to do so, and thus violating the Seperation Of Powers clause of the United States Constitution.

For these reasons, and all mentioned in the writ and attachments, Mr. James' petition must be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: Jan 2, 2019

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Charles K. James, Jr. — PETITIONER
(Your Name)

VS.

Jeffrey Kruger — RESPONDENT(S)

PROOF OF SERVICE

I, Charles K. James, Jr., do swear or declare that on this date, January 2, 20 19, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:
AAron Rogers; Counsel for
Jeffrey Kruger
Assistant Attorney General
Iowa Department of Justice
1305 E. Walnut st., second floor
Desmoines, Ia 50319

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 2, 2019

(Signature)

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Charles K. James , Jr. -PETITIONER

VS.

Jeffrey Kruger -RESPONDENT

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

UNITED STATE COURT OF APPEALS

Charles K. James, Jr.

#99725-555

United States Penitentiary-Terre Haute

P.O.Box 33

Terre Haute ,IN 47808

QUESTION(S)

1.)THE IOWA STATE COURT DECISION IN STATE V. HEEMSTRA THAT IT IS AN INTERPRETATION OF THE STATUTE IS CONTRARY TO THE DECISION IN STATE V. GOOSMAN THAT HEEMSTRA INVOLVES A CHANGE IN LAW AND NOT A MERE CLARIFICATION. THE DECISION IN STATE V. HEEMSTRA ALSO IS CONTRARY TO CLEARLY ESTABLISHED UNITED STATES SUPREME COURT DECISION(S) IN UNITED STATES V. BOUSLEY AND RIVERS V. ROADWAY EXPRESS, INC. REGARDING IT'S STATUTORY INTERPRETATION' DEGREE OF RETROACTIVITY AS IT SPRUNG FROM A CONSTITUTIONALLY DEFECTIVE FELONY-MURDER JURY INSTRUCTION THAT IN ESSENCE VIOLATED THE FOURTEENTH AMENDMENT GUARANTEE TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW. HENCE, MR. JAMES WAS DENIED THESE CONSTITUTIONAL GUARANTEES, THUS THIS DECISION RESULTED IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

JUSTICE CARTER, DISSENTING, clearly stated in State v. Heemstra, 721 N.W. 2d (2006);the courtproceeded on the "rule of statutory interpretation" ;

> "The rule of statutory interpretation that is embodied in our rules of appellate procedure insists that in determining the meaning of statutes "the court searches for legislative intent as shown by what the* 564 legislature said..."
> "...If we interpret this statute according to it's plain meaning..."

Thus, it is clear from his words that the court's decision in Heemstra was a collective effort to interpret the meaning of the Iowa Felony-Murder statute, as the legislature itself did not reenter the field and make itself clear by passing a new law, it cannot be construed to anything more than what the court's, judges, and prosecutors have the power to do. However Also, in the State's own "Brief And Conditional Notice of Oral Arguement" in James v. State, No. 08-0021(2009), the state itself argued on page 19;

> "...In earlier cases this Court has treated the decision to adopt or reject the rule(i.e. ~ ~ independent felony rule) as a matter of statutory construction. See, e.g., State v. Rhomberg, 516 N.W. 2d 803, 804-805(Iowa 1994): State v. Beeman, 315 N.W. 2d 770, 776-77(Iowa 1982)."

Therefore, both of these instances stand in stark contradiction to what the court declared the ruling in Heemstra to be in Goosman v. State, 764 N.W. 2d at 545; therein the courts stated;Heemstra;

> "...clearly involved a change in law and not a mere clarification."

That declaration also contradicts what the Eighth Circuit Court held in Graves v. Ault,;

"Heemstra interpreted the substantive elements of a state statute and thus prescribed neither a new rule of criminal procedure nor a rule dictated by the Constitution." Footnote 7 (citations ommitted)

The United States District Court also held in James' case in it's "Factual Predicate" ruling that;Heemstra is;

"...a change in the [interpretation] of law" (emphasis mine)

All of which establish the fact, supporti ng Mr. James' claim, that Heemstra is a statutory interpretation of the Felony-Murder statute, and it's ruling is not "new law". The courts, judges nor prosecutor have the power to create law/pass new law, this is a power reserved for the legislature according to Sessions v. Dimaya; thus, for any court to assert the ruling in Heemstra is new law "invites more arbitrariness than the constitution allows". Justice Gorsuch states therein;

"...The Constitution assigns to judges the "Judicial Power" to decide "Cases" and "Controversies." Art.III 2. That power does not liscense judges to craft new laws to govern future conduct, but only to "discer[n] the course prescribed by law" as it currently exists and to "follow it" in resolving disputes between the people over past events. Osborn v. Bank of United States 9 Wheat. 738, 866 (1824)."

"From this division of duties, it comes clear that legislators may not "abdicate their responsibilities for setting the standards of the criminal law," Smith v. Goguen, 415 U.S. 566,575 (1974), by leaving to judges the power to decide "the various crimes includable in [a] vague phrase," Jordan v. De George, 341 U.S. 223 242 (1951) (Jackson J., dissenting). For"if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large[,] [t]his would, to some extent, substitute the judicial for the legislative department of government." Kolender v. Lawson 461 U.S. 352, 358, n. 7 (1983)(internal quotation marks ommitted)."

"See Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972)("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis").

"...The Supreme Court at the Bar of Politics 151 (1962) ("A vague statute delegates to administrators, prosecutors, juries, and judges the authority of ad hoc decision, which is in its nature difficult if not impossible to hold to account, because of its narrow impact").

Sessions v. Dimaya, 584 U.S. (2018)

For the court in Goosman to state the decision in Heemstra was a change in law is arbitrariness, as doing so transgresses the scope of it's powers to do so, and violates the Separation of Powers clause of the United States Constitution, and violates Iowa state court law within itself, as Heemstra clearly reminds us.

Therein Justice Carter,dissenting, states;

> "...We have recognized that stare decisis is particularly applicable""where the construction placed on a statute by previous decisions has been long acquiesced in by the legislature, by it's continued use or failure to change the language of the statute so construed, [the power to change the law] as interpreted being regarded, in such circumstances, as one to be exercised solely by the legislature."Cover v. Craemer, 258 Iowa 29, 34-35, 137 N.W. 2d 595, 599 (1965)(quoting 21 C.J.S., Courts 214 (1959)(currently contained in 21 C.J.S. Courts 167 (1990))). That principle of law has been previously invoked by this court in our consideration of the Beeman line of cases. See State v. Rhomberg, 516 N.W. 2d 803, 805 (Iowa 1994)("A proposed change in the law, if desired, is in the province of the legislature.")."(emphasis mine)

Therefore, even if Goosman, Heemstra or any other court or judge "desired" to "so much as "propose a change in the law" it does not have the power to declare such nor to enact such a change itself. Nowhere in Heemstra did it state it was a change in law, or even that it was 'new law', only that it was an interpretation of the Felony-Murder statute. Thus, not only does the Goosman holding contradict Heemstra, it violates the Separation of Powers clause of the Federal Constitution. All any of the abovementioned Courts had the power to do was issue "a change in the interpretation of law", which is only necessary in the case of statutory interpretation if a statute is vague and overbroad. Thus, the only change in the matter was in the interpretation of the Felony-Murder statute.

In that light, as the ruling in Heemstra can be nothing more than statutory interpretation, the degree of it's retro-

activity necessarily arises. American Trucking Assns, Inc. v. Smith, 496 U.S. 167, 177, 110 S.Ct. 2323, 2330, 110 L.Ed.2d 148 159 (1990)(citing Great Northern R. Co. v. Sunburst Oil Refining Co., 287 U.S. 358, 364, 53 S.Ct. 145, 148, 77 L.Ed. 360, 366 (1932) stated, "When questions of state law are at issue, state courts [generally] have the authority to determine the retroactivity of their own decisions." (emphasis mine)The key here lies in the word "generally", which does not mean in all cases and instances, and the very definition of the word leaves room for exceptions.Mr.-James argues here that the Iowa courts decisions contradict one another in regards to what the ruling in Heemstra actually is, i.e a change in law or statutory interpretation, as well as does Goos-man contradict the Eighth Circuit Court in Graves v. Ault; and th-eses contradictions fall upon facts indistinguishable from those of United States Supreme Court prior holdings, and thus are contr-ary to thos e holdings as well.Due to these contradictory rulings, Mr. James asks the United States Supreme Court to resolve these disagreements and Federal Constitutional violations because it's Court has already decided the degree of retroactivityof such issues as the one at hand, i.e. statutory interpretations, and it decided this long before the ruling in Heemstra, almost a decade before it. and perhaps much longer.

The issue in Heemstra was not a "question of state law" it was an "interpretation of a state staute", which as such, it's de-gree of retroactivity was already determined in Rivers and Bousley. To view it any other way then places the United States Supreme Court decisions in Great Northern R. Co. v. SunBurst Oil Refining Co. and it's line of cases in contradiction to Rivers v. Road-way Express,Inc. and it's line of cases, which clearly do not cont-

radict each other, when viewed with a vigilant eye.

Heemstra is a statutory interpretation, which in the light of Rivers and Bousley is automatically "fully" retroactive for it is clearly established United States Supreme Court law;

> "[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."

Rivers v. Roadway Express, Inc., 511 U.S. 298, 312-13, 114 S.Ct. 1510, 128 L.Ed.2d 275 (1975). In light of Rivers, the arguement is that if the Iowa Court's construction of the felony murder statute under Iowa code is to be construed as the Court declared in Heemstra that "if an act causing willful injury [and, presumably, terrorism] as a forcible felony is the same act that causes the victim's death, the former is merged into the murder and therefore cannot serve as the predicate felony for felony murder purposes[,]" then, at the time of Mr. James' trial, the same interpretation of Iowa's felony murder statute must apply as the United States Supreme Court stated in Rivers. Thus the Iowa Appellate Court and Supreme Court's failure to recognize Mr. James' claim and grant relief to Mr. James with respect to this claim is contrary to "clearly established Supreme Court Law." In Bousley v. United states, 523 U.S. 614, 633, 118 S.Ct. 1604 140 L.Ed.2d 828 (1998), the Court stated;

> "It is well established that "when this court construes a statute, it is explaining it's understanding of what the statute has meant continuously since the date when it became law." Rivers v. Roadway Express, Inc., 511 511 U.S. 298, 313, n.12, 128 L.Ed.2d 274, 114 S.Ct. 1510 (1994)."

This decision by the Supreme Court means that Mr. James could not be charged with and convicted of felony murder based on the predicates "willful injury" or "terrorism in light of the Iowa Supreme Court's decision in Heemstra, supra. This decision, moreover, must be fully retroactive to cases on collateral review under Bousley v. United

States, 523 U.S. 614, 620, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998). Furthermore, the Supreme Court has explained that a state court's decision is "contrary to" clearly established Supreme Court law "if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to ours." Williams v. Taylor, 529 U.S. 362, 402-3, 405, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000).

Thus, this is a miscarriage of justice and a violation of Mr. James' Fourteenth Amendment Rights to due process and equal protection under the law and his Sixth Amendment Right to a fair trial, that will go on uncorrected should this court not intervene and apply the ruling in Heemstra to Mr. James' case under Rivers and Bousley resulting in a man serving the rest of his life in prison because his United States Constitutional Rights were violated.

2.)MR. JAMES' FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED BECAUSE THE INSTRUCTIONS GIVEN AT HIS TRIAL, AND THE GENERAL VERDICT FORM, PERMITTED THE JURY TO CONVICT HIM OF FIRST-DEGREE MURDER AND/OR FELONY MURDER WITHOUT A FINDING AND/OR A SEPERATE FINDING OF THE ESSENTIAL ELEMENTS ESTABLISHING FIRST-DEGREE MURDER(WILLFULLY DELIBERATELY, PREMEDITATEDLY, AND WITH SPECIFIC INTENT)NOR A FINDING OF THE PREDICATE OFFENSE ESTABLISHING FELONY MURDER(WILLFUL INJURY OR TERRORISM), THUS POSSIBLY RESTING HIS CONVICTION ON A PREDICATE FELONY WHICH IS NOT A FORCIBLE FELNY (TERRORISM) .THEREFORE, IT IS IMPOSSIBLE TO DETERMINE WHAT THE JURY UNANIMOUSLY AGREED MR. JAMES IS GUILTY OF, OR IF HIS CONVICTION RESTS UPON A THEORY CONTAINING LEGAL ERROR,RESULTING IN A FUNDAMENTAL MISCARRIAG OF JUSTICE.

ARGUEMENT

In the instant case, Mr. James was charged with in the Iowa District Court with Murder in the First Degree. The charges stated "that the above-named Defendants willfully, deliberately, and with premeditation killed Cedric Johnson and/or killed Cedric Johnson while participating in the forcible felonies of willful injury and/or terrorism in violation of Sections 707.1, 707.2(1), and707.2(2)

of the Iowa Code. (CLASS A FELONY)"

Mr. James challenges his conviction and sentence of life without parole by and Iowa state trial court, contending his federal constitutional right to due process was violated because the instructions given at his trial, and the general verdict form, permitted the jury to convict him of first-degree murder and/or felony murder without a finding beyond a reasonable doubt of the essential elements establishing first degree murder, nor a separate finding of each and every elemnt , specifically, willfully, deliberately, premeditatedly and with specific intent ; nor a finding beyond a reasonable doubt of the predicate offense(s) establishing felony murder, specifically willful injury or terrorism, which terrorism is not a forcible felony and thus cannot serve as the predicate felony for felony murder purposes. Thus, it is impossible to determine what the jury unanimously aggreed Mr. James is guilty of, or if his conviction rests on a charge or theory containing legal error. Mr. James further contends that this constitutional error with respect to the jury instruction in the instant case had substantial and injurious effect or influence in determining the jury's verdict. As several Courts of Appeals have stated; "The issue on a habeas challenge to a jury instruction is wether the ailing instruction b y itself so infected the entire trial that the resulting conviction violates due process." See Chambers v. McDaniel, 549 F.3d 1191(9th Cir. 2008). Mr. James argues that the jury instruction in the instant case so infected the entire trial that the resulting conviction violates due process.

In Liggins v. Burger, 422 F.3d 642 (8th Cir. 2004), the court stated;

> "Generally, issues relating to jury instructions in state court proceedings involve "the application and interpretationof state law." Louisell v. Director of Iowa Dept of Corrections, 178 F.3d 1019,1022 (8th Cir. 1999)(citing

> Estelle v. McGuire, 502 U.S.62, 67-68, 116 L.Ed.2d 385 112 SWS.Ct. 475 (1991)). An instruction correctly setting forth state law does not, however, necessarily satisfy due process concerns. Id. We may grant habeas corpus relief when a "jury instruction constituted 'a fundamental defect' that resulted 'in a complete miscarriage of justice, [or] an omission inconsistent with rudimentary demands of a fair triasl." Id. (citations omitted).

Mr. James contends that the jury instructions(see exhibit) were prejudicial because they allowed the jury to find him guilty of Murder in the First Degree without finding beyond a reasonable doubt all of the essential elements of the offense of conviction (see attached General Verdict Form at Exhibit). Therefore, Mr. James can show that the"erroneous jury instruction[s] constituted 'a fundamental defect' that resulted in a complete miscarriage of justiice, [or] an ommission inconsistent with rudimentary demands of a fair trial.'" Louisell, 178 F.3d at 1022 (quoting Crump v. Caspari, 116 F.3d 326, 327 (8th Cir. 1997) and Hill v. United States, 368 U.S. 424, 428, 82 S.Ct. 468, 7 L.Ed.2d 417 (1962)).

As In re Winship, 397 U.S. 358, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970) makes clear, due process mandates "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the defendant] is charged." Id., at 364, 25 L.Ed.2d 368, 90 S.Ct. 1068.The general verdict returned against Mr. James in this case does not meet the requirements of due process and goes against the import of Winship's holding. Thus, the constitutional preblem created thereby is fundamental and is inconsistent with the rudimentary demands of a fair trial.

Case law from the Supreme Court, followed by the district courts and Circuit Courts of Appeals, makes clear that federal court generally give rgreat deference to the States in defining

the elements of crimes. However, despite such deference, it must be recognized that premeditated murder and felony murder are alternative courses of conduct by which the crime of first degree murder may be established. Under Iowa Code, murder in the first degree is established either by; willfully, deliberately, premeditatedly, and with a specific intent to kill; [or] by participating in a forcible felony which, as the predicate offense, must be charged in the indictment, presented to the jury, and found by a jury beyond a reasonable doubt. In the instant case, the forcible felony was charged as either Willful Injury or Terrorism, which there is no indication that the jury found unanimously beyond a reasonable doubt. This is compounded by the fact that Terrorism is not a forcible felony, and thus cannot serve as the predicate felony for felony murder purposes.

In Mr. James' case, the prosecutor set out to convict the defendant of first degree murder by 'either' of two different paths premeditated murder or felony murder. Yet, while these two paths both lead to conviction for first degree murder, they do so by"divergent routes" possessing no elements in common except the fact of a killing. Consequently, a verdict that simply pronounces a defendant "guilty" of murder in the first degree provides no clues as to wether the jury agrees the five elements of premeditated murder or the two elements of felony murder have been proven beyond a reasonable doubt. And the courts confirm this conviction without knowing that even a single element of either of the ways for providing first degree murder, except the fact of a killing, has been found by the majority of the jury, let alone unanimously. A defendant charged with first degree murder is at least entitled to a verdict-something the defendfant in this case clearly did not get, as long as the possibility exists

that no more than six jurors voted for any one element of first degree murder, except the fact of a killing.

The problem is that the Iowa statute , under a single heading criminalizes several alternative patterns of conduct,While a state is free to construct a statute in this way, it violates due process for a state to invoke more than one statutory alternative, each with different specified elements, without requiring the jury indicate on which of the alternative theories it has based the defendants guilt. (See Schad v. Arizona, 501 U.S. 624,111 S.Ct. 2491, 115 L.Ed. 1 555 (1991) (Dissenting opinion).

Furthermore, this alternative error extended into the predicate offense for felony murder, in which two different felonies were proposed/invoked as the predicate felonies for felony murder purposes(willful injury or terrorism), one of which was not a forcible felony(terrorism). Justice Carter, dissenting, in State v. Heemstra, 721 N.W. 2d 549 (2006) eloquently stated;

> "...The present first degree murder statute [pre-1978 law] refers to only five of the dangerous felonies. If a homocide occurs in the course of the commission ofsome felony other than the five listed, under present law a first degree murder conviction will depend upon a showing of "premeditation and deliberation."... 566 Yeager, 60 Iowa L.Rev. at 510-11

At the time of both Heemstra and Mr. James' trials the Iowa Code provided and read; as;

> "...Section 707.2(2) provides; "A person commits murder in the first degree when he or she commits murder under any of the following circumstances:...The person kills another person while participating in a forcible felony." "Forcible felony" is defined as " any felonious assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burgulary in the first degree."

Not only is Terrorism not listed as one of the "five dangerous felonies," it does not constitute felonious assault as it could be merely the pointing of a gun, and the court in Heemstra clearly stated;

> "...the problem inherent inthe felony murder instruction i.e. if the jury found Heemstra pointed the gun at Lyon intending to cause serious injury and that serious injury

resulted, it could find felony murder, despite the fact that the gun pointing was not a forcible felony for purposes of felony murder and without proof of willfullness deliberation, and premeditation."

As Terrorism is therefore not a forcible felony, and in this case the jury retrumned a general verdict of guilty which does not reveal the basis for the guilty verdict, there's a possibility Mr. James was wrongfully convicted under a theory containing legal error.There is no way of determining which theory of predicate the jury accepted.

All of this is compounded by (and made more egregious by) the fact that Mr. James' federal constitutional right to due process was violated by the jury instructions given at his murder trial, along with the general verdict form, as they permitted the jury to convict him of first degree murder without finding [seperately] all the elements of that crime; willfullness, deliberation premeditation, with specific intent; [or] felony murder based on the alleged predicate(s) of "willful injury" or "terrorism". See Chambers v. McDaniel, 549 F.3d 1191 (9th Cir. 2008). The due process error in the instant case is very much the same as the due process error in Chambers, supra. In Chambers, the court stated;

> "As we did in Polk [Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007)], we look here at "wether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process...[T]he instruction... must be considered in the context of the instructions as a whole and the trial record." See Estelle v. McGuire, 502 U.S. 62, 72, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991)(citationand internal quotation marks omitted). Other instructions given at Chamber's trial compounded the error. For example, instruction No. 26 provided that"[t]he nature and extent of the injuries , coupled with repeated blows, may constitute evidence of willfullness, premeditation, and deliber ation." In this instruction, the three seperate elements are collapsed... into one. Instructuion No. 22 further confuses the issue, when it defines second degree murder as "all other kinds of murder" and contains no discussion of the lesser intent requirement for second degree murder."

Additionally, the Chambers court stated;

> "Our inquiry does not end here. Even though a constitutional error occurred, Chambers is not entitled to relief unless he can show that"the error had a substial and injurious effect or influence in determining the jury's verdict." 2 Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S.Ct. 1710, 123 L'.Ed.2d 353 (1993). "If we are in grave doubt as to wether the error had such an effect, the petitioner is entitled to the writ." Coleman v. Calderon, 219 F.3d 1047, 1051 (9th Cir. 2000).."

The facts of the instant case, including the jury instructions and the general verdict form, clearly show that"the error had a substantial and injurious effect or influence in determining the jury's verdict." Brecht, supra.

While the Supreme Court's decision in Schad v. Arizona, 501 U.S. 624, 111 S.Ct. 2491, 115 L'.Ed.2d 555 (1991) may weigh against the arguement Mr. James attempts to make here, he invokes the Supreme Court's holding in Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L'.Ed.2d 652 (1972), and asks this Honorable Court to consider the dissenting opinion in Schad by Justice White, with whom Justices Marshall, Blackmun, and Stevens joined, as it precisely makes the arguement that Mr. James attempts to make here .

As the Eighth Circuit Court of Appeals stated in Liggins v. Burger, 422 F.3d at 650; "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364, 25 L'.Ed.2d 368, 90 S.Ct 1068 (1970)."This bedrock,axiomatic, and elementary [constitutional] principle prohibits the state from using evidentiary presumptions in a jury charge that have the effect of relieving the state of it's burden of persuasion beyond a reasonable doubt of every essential element of the crime." Francis v. Franklin, 471 U.S. 307, 313, 85 L'.Ed.2d 344, 105 S.Ct. 1965 (1985)(citations and quotation marks

omitted). "A criminal statutory presumption must be regarded as 'irrational' or 'arbitrary', and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." Leary v. United States, 395 U.S. 6, 36, 23 L.Ed.2d 57, 89 S.Ct. 1532 (1969). The Due Process Clause protection announced in In re Winship, 397 U.S. at 364, is likewise echoed in Jackson v. Virginia, 443 U.S. 307, 315-316, 61 L.Ed.2d 560, 99 S.Ct, 2781 (1979). Iowa's longstanding practise of joining both first degree premeditated murder and felony murder under the same rubric allowing a jury to find an accussed guilty of murder in the first degree without distinguishing wether the verdict is based upon their belief that the prosecution has proven the elements of premeditated murder or felony murder, and the predicates of willful injury or terrorism, should not be permitted to excuse the constitutional due process violation Schad eloquently states occurs on such occassions, as in this case, that has deprived Mr. James of a fair trial under the Sixth Amendment to the Constitution. Such egregious violations of an accussed's rights constitutional rights, especially when overlooked and uncorrected through an appellate process, constitute a fundamental miscarriage of justice. With respect to this petition under 28 U.S.C.S. § 2254, the law is clear that federal courts may not grant a petition for if a State court has denied the asserted claim "pursuant to an independent and adequate state procedural rule... unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501

U.S. 722, 750, 111 S.Ct. 2546, 115 L'.Ed.2d 640 (1991); see also Lee v. Kemna, 534 U.S. 362, 375-76, 122 S.Ct. 877, 151 L'.Ed.2d 820 (20002 (2002).

3.)THE UNITED STATES DISTRICT COURT'S "DISCUSSION OF APPLICABLE LAW" RULING ON MR. JAMES' PETITION STANDS IN CONTRADICTION TO WHAT THE UNITED STATES DISTRICT COURT ALLOWED IN DEJONG V. NEBRASKA UNDER 28 U.S.C. § 2254 (d)(1), AND THE "FACTUAL PREDICATE" ASPECT OF THAT RULING DECLARING THE IOWA COURT DECISION IN STATE V. HEEMSTRA TO BE "A CHANGE IN THE INTERPRETATION OF LAW" IS NOT ONLY A RENDERING CONTRARY TO THAT IN STATE V. GOOSMAN, IT ALSOSETS FORTH AN INNOVATIVE AND UNPRECEDENTED ADJUDICATION BY A HIGHER COURT POTENTIALLY SETTLING THE DISAGREEMENT AND SUPPORTING MR. JAMES' ARGUEMENT THAT HEEMSTRA IS MERELY STATUTORY INTERPRETATION AND IS THUS AUTOMATICALLY "FULLY" RETROACTIVE.THE CONTRADICTIONS BETWEEN THE COURTS AND CASES HAVE RESULTED IN A DENIAL OF MR. JAMES' FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

ARGUEMENT

In Mr. James' "Memorandum of Law In Support of Petition Under 28 U.S.C. 2254 For Writ of Habeas Corpus" on page(s) 8-9, he clearly sets forth the standard under which he brought his petition, quoting Dejong v. Nebraska, 2017 U.S. Dist. LEXIS 19528 (February 9, 2017),".. Section 2254(d)(1) states that a federal court may grant a writ of habeas corpus if the state court's decision "was contrary to, or involved an unreasonable application of, clearly establish Federal law, as determined by the Supreme Court of the United States." 28 U. U.S.C. § 2254(d)(1). A state court acts contrary to clearly established Federal law if it applies a legal rule that contradicts the Supreme Court's prior holdings or if it reaches a different result from one of that Court's cases despite confronting indistinguishable facts. " Williwams v. Taylor, 529 U.S. 362, 405-406, 120 S.Ct. 1495, 146 L'. Ed.2d 389 (2000)....

With regard to the deference owed to factual findings of a state court decision, section 2254(d)(2) states that a federal court may grant a writ of habeas corpus if a state court proceeding "resul-

ted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254 (d)(2). Additionally, a federal court must presume that a factual determination made by a state court is correct, unless the petitioner "rebut[s] the presumption of correctness by clear and convincing evidence." 28 U.S.C.§ 2254 (e)(1)."His arguements regarding Heemstra and Nguyen are that they "contradict" or are "contrary to clearly established Supreme Court Law" as set forth in Rivers v. Roadway Express,Inc. and Bousley v. United States,supra. (See Memorandum of Law...p. 19-20).

The United States District Court in James' case ruled on this issue under the Factaul Predicate standard of 2244 because the state in it's arguement transposed this aspect of the issue/petition into such, in an effort to make a "catch all"/cover all bases arguement in resistance to Mr. James' issue/petition. So, when the Court ruled, it adopted the state's perspective of the standard the claim(s) were brought under. However, the Court's analysis contradicts that of another court's ruling; in Dejong v. Nebraska, 2017 U.S. Dist. Lexis 19528 (february 9. 2017), that court set foreth the standard under which claims such as Mr. James can be brought, that is, for state cou rt rulings that conradict/ are contrary to clearly established Supreme Court law, and are "unreasonable". Mr. James was more than clear in those assertions regarding the abovestated claims, [and] that he brought them pursuant to cause and prejudice and miscarriage of justice exceptions. (See "Memorandum of Law..."p. 24-25, 27, 28-29).

Mr. James' claim(s) were also clealry twofold, which the court mixed and matched the dual aspect of Mr. James' Heemstra/Nguyen claim. One aspect was that it was "timely"- however, the other aspect in re-

gards to Heemstra condtradicting or being "contrary to" Federal law as as determined by the Supreme Court in Rivers and Bousley was brought under the standards as they were set forth in Dejong v. Nebraska supra., and as the sort of egregious violation of a defendants fundamental U.S. Constitutional Rights, that if uncorrected, persists in a "fundamental miscarriage of justice". (See Memorandum of Law..." p. 24-25, 28-29). The court never addressed Mr. James' claim under the standards he brought it in that it endeavored to encouch it all together in order to lay a Factual Predicate denial on top of it, as if the only standard it could be brought under was 2244(d)(1)(D); which again contradicts the standard set forth for such claims as Mr. James' set forth in Dejong v. Nebraska, supra.

Then, after having conducted and set forth a rational analysis of the ruling in Heemstra, the United States District Court so eloquently adjudicated that the ruling in Heemstra was "a change in the [interpretation] of law]"(emphasis mine), which is clearly "contrary to" what the Iowa courts have long held the ruling to be, that is, "a substantial change in law". Clearly these are two different rationalizations and deductions, as a cha nge in law and a change in interpretation are two completely different things. The one must necessarily "abolish" it's predecessor, while the other merely catapults it's meaning across what already exists without linguistic-construct modification therein. Thus, the District Court's ruling contradicts that of Goosman v. State, etc... as set forth earlier in the petition

A "change in the interpretation of law" does not have to fall or be brought under the "Factual Predicate subsection when the court is addressing "statutory interpretation" [and] when the court deems that change to be something other than what the Supreme Court says such is in one of it's prior holdings

it is already well established in Rivers v. Roadway Express, Inc., 511 U.S. 298, 313, n.12, 128 L.Ed2d 274, 114 S.Ct, 1519 (1994) and Bousley v. United States, 523 U.S. 614, 633, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)thats statutory interpretations are automatically retroactive, thus lending to them their own form of resolve when the Supreme Court stated,in Bousley," It is well established that when this court construes a statute, it is explaining it's understanding of what the statute meant continuosly since the date it became law."Rivers v. Roadway Express,Inc., 511 U.S. 298, 313, n.12, 128 L.Ed.2d 274, 114 S.Ct, 1510 (1994)." A claim brought under 'statutory interpretation retroactivity' does not have to be brought under the "Factual Predicate" subsection, they automatically go into effect on their own merits and points of law uniquely constrcuted to address them, in their own uniformity.Thus the court erred in it's analysis.

Also, the courts adjudication is more than an affirmation of the merit of Mr. James' claim that Heemstra is nothing more than a "statutory interpretation" and is automatically retroactive under Rivers and Bousley. And it potentially gives rise to a new issue of 'what the Hemstra ruling is' and a new date from which "a particular class of cases" may seek some type of relief thereupon. For the court stated it is "a change in the [interpretation] of law" rather than 'a substantial change in law', which are two completely different things in essence, as a change in the way a law is interpretatted does not necessarily mean the law was changed at all, and just may read exactly the way it read before the way it was being interpreted changed.

The United States District Court is a Federal court, a higher court, and thus it's analysis potentially settles the disagreement on

exactly what the ruling in Heemstra is; if not, it does demonstrate there's substance to Mr. James' cl aim, to say the least, as that co urt's adjudication is more than an affirmation of Mr. James' claim, since it is well established that only the legislature can set forth "new law".

Heemstra merely pertained to the courts' construance of the Felony Murder rule and merger doctrine, not the statute's founding construction. Although it changed the way Iowa interpreted the felony murder statute regarding the use of Willful Injury as a predicate felony for felony murder, it [o]nly interpreted the statute, which it did not change. Heemstra's issue was the intepretation of the statute allowed the jury to be instructed on a defective felony murder instruction, which in turn allowed him to be found guilty of murder without a finding of the essential elements of that crime; and that is clear from what the Supreme Court acknowledged Heemstra's lawyer to have objected to, which the court said was, "sufficient to alert the court to the problem inherent in the felony murder instruction...". His issue was not merger doctrine, the merger doctrine merely became pivotal in the courts analysis and rationale because it contains the principles the legislature intended would provide uniformity to the laws and statutes. Thus, the rule announced in the case was as the United States District Court stated, merely "a change in the interpretation of law". Immediately after stating it's holding, the Heemstra court stated, "in reaching this conclusion, we agree that we should not attribute to the legislature an intent to "create [] an ever-expanding felony murder rule" by characterizing every willful injury as a forcible felony for felony murder purposes". That holding was very clear of the boundaries it intended to keep, based on the objections Heemstra made in trial, which preserved the issue in

the first place, to the jury instruction and general verdict form. In essence, there was no 'change' in the pre-existing statutory language, there was the establishment of a what is to be "characterized")(or interpreted) as an act sufficient to serve as the predicate felony for felony murder. This was clarification, and clarification is not necessarily evolution, which even if we are to say it was then we first have to acknowledge that the statute was vague and overbroad, otherwise there would never have been a need for clarification, interpretation, characterization, nor "evolution".

Now, in regards to Nguyen, when the petitioner filed his Heemstra claim in 2006, the state argued that on page 22 of it's "Brief And Conditional Notice of Oral Arguement" in James v. State, No. 08-0021(2009)(before the supreme court);

> "The Iowa Supreme Court has provided that the rule adopted in Heemstra does not apply to cases, like applicant's case, which became final before Heemstra was decided...His claim based on the independent felony rule is not a claim which could not have been raised within the three year period. Such claims were available to be raised, and were raised, before his conviction...As applicant's claim is not based on a ground of fact or law which "could not have been raised within the applicable time period,"his application did not fall within the exception to the statute of limitations."

However, the Iowa District court stated in it's "order" on Mr. James' case regarding his Nguyen claim in 2014 James v. State, No. pCCE76188 (2014);

> "The applicant fundamentally misreads Nguyen in this regard. All that case holds is that the Heemstra decision was a new ground of law that could not have been urged in the first three years after Nguyen's conviction, but afforded him the opportunity to use it as a basis for seeking postconviction relief outside the limitations of 822.3, where that relief was being sought within three years of Heemstra decision."

This clearly contradicts what the court ruled [and] the state argued in Mr. James' case. Nguyen was convicted in 1999, Mr. James was convicted in 2000.If the Heemstra holding allows for Nguyen "to use it

as a basis for seeking postconviction relief outside the limitations of 822.3 where the relief was being sought within three years of the Heemstra decision", then why does it not allow Mr. James to do the same, when he was convicted merely months after Nguyen, and filed his postconviction application seeking relief under the Heemstra decision within 30 days of the Heemstra ruling? That ruling inNguyen is exactly why Mr. James had to file that petition and did file that petition, because it ruled it could be done after the courts and state eloquently stated in Mr. James' case that it could not.That is a clear violation of the Equal protection clause of the United States Constitution and Mr. James' right to due process under the Fourteenth Amendment thereof. He should have been afforded the same opportunity to seek post conviction relief just as nguyen was.

There are way too many contradictions between the cases, courts and in Mr. James; case in regards to the way these rulings and decisions are being applied.They have been applied in an unreasonable fashion as they are contrary to one another in the 6 different cases listed, i.e. Heemstra, Rivers, Bousley, Goosman, Nguyen, Graves,and then those in his and Dejong; which allows him to come in under the standards of 28 U.S.C. § 2254(d)(1) and (d)(2), according to Dejong v. Nebraska,supra.

4.) MR. JAMES' PETITION IS ENTITLED TO EQUITABLE TOLLING UNDER BOTH COLEMAN V. THOMPSON AND HOLLAND V. FLORIDA : HE IS ALSO ENTITLED TO EQUITABLE TOLLING UNDER COULTER V. KELLY.AND EGERTON V. COCKRELL

ARGUEMENT

IN JUNE OF 2000, Mr. James filed a direct appeal to the Iowa Court of Appeals, which was affirmed on or about July 18,2001. Mr. James timely appealed to the Iowa Supreme Court. While that appeal was still pending , Mr. James filed a postconviction application

which was dismissed on August 31, 2001 because it was filed while Mr. James' appeal was still pending in the Iowa Supreme Court. The court admonished Mr. James that he could only have one action pending and therefore he must make a choice between which of the two he wished to proceed on. It did not inform Mr. James that he had another option, which was to stay the action, until his appeal in the Supreme Court had been ruled upon, which it was it's duty to do since it took upon itself to notify him of his options. The fact that Mr. James had filed two actions at once in different courts was enough for the courts to deduce he needed the aid of counsel on the matter, which it also failed to provide himwith .

Mr. James filed that postconviction action while his direct appeal was still pending because of his misunderstanding of the AEDPA and inability to reconcile the Iowa statutes with it. The AEDPA statute of limitations gives one year to file for Habeas Corpus, however the Iowa statute allows one three years to file a postconviction relief application. In the two doctrines the court of direct review is referred to in different terms, and the timeframes for filing seemingly overlapped. So due to the fact that Mr. James wasnt sure ifthe two courts referred to as direct review and further review were the same, nor which action must be filed first and when the statute of limitations would begin, he simply filed his postconviction action in order to "stop the clock" on his habeas corpus statute of limitations, in order to preserve his rights thereto. He was ignorant of the law, completely, as he didnt even know two actions couldnt be filed at once.

After giving Mr. James the ultimatum the court gave him of dismissing one and proceeding with one, or both would be dismissed, Mr. James naturally chose to proceed with his appeal in the Supreme Court to ensure his remedies were properly exhausted. The court then

informed Mr. James that his postconviction action would be dismissed and he should "wait" until he recieved notice of a decision that his appeal had been ruled upon before he filed another one. Following that specific instruction of the court, Mr. James "waited". Mr. James case is indistinguishably material to that of Coulter v. Kelley,871 F.3d 612, 2017 US App. Lexis 17775 in which the court stated;

> "...Coulter's state petition ahd been pending for almost 8 years, and it was reasonable for him to believe it might remain pending for a bit longer. Without any indication from the state court that his petition had been resolved, Coulter was exercising reasonable diligence by continuing to wait. Cf. Holland, 560 U.S. at 650("The 'flexibility' inherent in 'equitable procedure' enables courts 'to meet new situations that demand equitable intervention and to accord all relief [871 F.3d 627] necessary to correct particular injustices."' (alterations omitted)(quoting Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 248, 64 S.Ct. 997, 88 L.Ed.2d 1250, 1944 Dec. Comm'r Pat. 675 (1944)))"

Mr. James' diligence was twofold, first of all he followed the court's direct orders to "wait", secondly, he took the initiative himself to file a postconviction application during which the court itself told him his appeal was still pending- so there was no need for Mr. James to do anything more than what he done and was instructed to do in order to meet the reasonable diligence standard set forth above, for that standard merely requires that he "wait".

Mr. James was palced in the Death Row building(an old condemned cellhouse which decades before had been closed down by court order and abolishment of the death penalty in Iowa) in Sept. of 2001. While he was in that building, his appeal had been ruled upon Oct. 31 2001. However, notice of the decision was never delivered up to Mr.-James because "Post Orders" were issued to all officers who entered the building "not to give the inmates anything" nor to even "go onto the tier".Thus Mr.,James [never] recieved notice of that decision to this day because the officers never delivered it up to him.Therefore,

Mr. James' wait continued on until 2003, when he was notified by an inmate that he saw his appeal had been denied in the newspaper. So the Correctional Officers actions of not delivering up to Mr. James his notice of a decision constitutes an "impediment" created by state action, i.e. the "Post Orders" given to the officers, and their subordination thereto. Thsu, Mr. James had no reason to believe that filing was "necessary or ripe". Mr. James is thus entitled to Equitable Tolling under "Delayed Notice";

> " Equitable Tolling is available to address delayed notice that leads a prisoner to believe that filing was not necessary or ripe, but 28 U.S.C. § 2244(d)(1)(B) requires state action that actually prevents filing. The section would apply, for instance, when state prevents a prisoner from sending mail to the court, or perhaps when a prison law library refuses to furnish essential legal materials..."
> Coulter v. Kelley, 871 F.3d 612,(20170(8th Circuit 2017)

Which all of the abovestated the officers did, as inmates in the Death Row building were not allowed to send mail out and obviously not to recieve mail form the courts. The law library also was not allowed to send anything to that unit, there was no law library set up in that unit and no program was ever established for the Death Row unit inmates to recieve essential legal materials from the law library in general population.All of the above is a violation of the United States Constitution and Federal Law, which resulted in Mr. James being denied his due process guarantee.;

> "A state's failure to provide the materials necessary to prisoners to challenge their convicitons or confinement constitutes an "impediment" for purposes of invoking 28 U.S.C.S. § 2244(d)(1)(B).Egerton v. Cockrell, 334 F.3d 433 433;U.S. App. LEXIS 11766

The complete absence of a law library is to appraise prisoners of their rights violates the First Amendment right, through the Fourteenth Amendment, to access to the courts.(see Egerton v. Cockrell, supra.). This "impediment" or "state action" also caused Mr. James to Miss his certiorari and original filing deadline/ one year statute of limitations, as he did not find out until the beginning of 2003, a few month after it ran it's toll.;This all constitutes "extra ordinary circumstances";

"To recieve equitable tolling, a petitioner must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing. The diligence required for equitable tolling is reasonable diligence, not maximum feasible diligence."
"To secure equitable tolling, a petitioner also must show that the extraordinary circumstances caused him to miss the original filing deadline..." Coulter v. Kelley, 871 F.3d 612;U.S. App.LEXIS 17775

Thus, Mr. James is entitled to equitable tolling from Oct. 31, 2001 to February(it's end) 2003, when he became aware of the appeal decision by inmate;

"28 U.S.C.S. § 2244 (d)(1)(B) provides, in relevant part that the limitations period begins to run on the date on which the impediment to filing an application created by state action is removed, if an applicant was prevented from filing by such state action."Egerton v. Cockrell, 334 F,3d 433; U.S.App. LEXIS 11766 (2003)

Within a matter of a month and a half of becoming aware of that decision, Mr. James filed his April 2003 action.

"(petitioner who filed habeas petition within one month of allegedly recieving delayed notice pursued rights with diligence.)" Phillips, 216 F.3d at 511.

That action remained pending until Sept. 8,2006, procendendo was issued Sept. 12,2006.Thus, no more than one month can be said to have passed. on his statute of limitations.

On Oct. 2, 2006-within a month and a half of the Heemstra ruling-Mr. James filed his postconviction action seeking relief under the Heemstra decision(which puts his action well within three years of Heemstra's). While that action was pending Mr. James filed an amendment thereto on "The Jones Affidavit" issue. His Heemstra claim was denied and procedendo was issued on June 26, 2009; however, the jones affidavit amendment survived and was reversed and remanded. Therefore that action actually remained pending until proit was denied and procedendo was issued on June 10, 2011. The Jones affidavit was raised under Newly Discovered Evidence, and Heemstra was raised under a new ground of fact of law, 822.3 of the Iowa Code.Both of these were thus filed timely, and the state already acknowledged that the statute of limitations can restart

on the Jones affidavit, as did the United States District Court on p. 6 of it's "order Granting Motion To Dismiss".In 2013 the Iowa Supreme court ruled in Nguyen v. State, 829 N.W. 2d 183 (Iowa 2013) that Heemstra"afforded him the opportunity to use it as a basis for seeking postconviction relief outside the limitations of §22.3, where that relief was being sought within three years of the Heemstra decision Id. at 186, 188. Thus, under the Equal Protection clause of the Federal Constitution, Mr. James' must be provided the same opportunity- thus his Heemstra is timely, and shouldve been allowed in.

Within 10 days of that decision Mr. James filed another postconviction, which remained pending until Feb. 2, 2012. Thus, up until this point, no more than 75 days can be said to have tolled on his limitations period.

Mr. James had been housed in the Federal Bureau of Prisons as a state prisoner for three and a half years now with no access to state law, nevertheless, he filed his 2012 action in order to exhaust state remedies because he had been held for 6 and a half years in Administrative segregation housing units with no access to state law. what he did get, he recieved from his loved one Ms. Stacy Cannonsaid. (This is in regards to his last years in state prison.) As he intended to file habeas, he made a effort to exhaust his rmedies in state, with what he had.

In 2013 the Courts made the ruling in nguyen, which took Mr. James Time to retriev, but because they allowed Nguyen in on the same ground they told Mr. James he could not come in under, he had to file his 2014 action, in order to give the state the oppotunity to address the issue he was bringing under Equal Protection under the law, to be afforded the same right as nguyen regarding his Heemstra claim.This action remained pending until March 27, 2017 because the courts could

not get the transcripts to proceed with the action, and actually dismissed it at one point, only to reopen it once the court reporter provided the transcripts. This took a year, not to mention that it took 6 months for Mr. James to even get a copy of the notice of the decision in the district, which he only got because Ms. Cannon,a loved one, went a purchased it for him and had the clerk of court resend it.The Supreme Court acknowledged this delayed notice "due to the paperwork filed" by Mr. james and allowed him to proceed on a delayed notice of appeal;

> "A significant state crateddelay in providing a prisoner with notice that his state judgement of conviction has become final amounts to extraordinary circumstances beyond a prisoner's control which can equitably toll the AEDPA statute of limitations if the prisoner has pursued his rights diligently" Earl, 556 F.3dat 723-24.

Thus, it has been both proven and acknowledged by the Supreme Court that Mr. James' notices have been delayed. This caused his last action to remain pending for years, on top of the fact he had no access to state law because the state failed to make the necessary arrangements upon housing him in federal prisons;

> "A state's failure to provide the materials necessary to prisoners to challenge their conviction or confinement constitutes an "impediment" for purposes of invoking 28 U.S.C.S. § 2244(d)(10(B)",,
> "The absence of all federal materials from a prison law library (without making some alternative arrangements to appraise prisoner's of their rights) violates the First Amendment right, through the Fourteenth Amendment, to access to the courts."Egerton V. Cockrell,supra.

Thus Mr James is entitled to tolling because of delayed notices, not being provided legal essentials in critical times, and being housed in units with no property at all, including legal work and stationary(i.e. in 2001-2002, the Death Row building and Unit 318 and 220)and still to this day he does not have acces to state law to prepare his actions for this writ, nor did he for habeas-which he still needs as he is a state prisoner.Holland v. Florida 560 U.S. 631,648 (2010) makes clear that the one year clock may be stopped or "tolled" for equitable reason

notably when "extraordinary circumstances" prevent a prisoner from filing his federal petition on time. Id. And, "when a habeas petitioner defaults his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review is barred unless he "can demonstrate cause for default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.'" Coleman v. Thompson, 501 U.S. 722, 750-51, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991).

Mr. James has clearly demonstrated "extraordinary circumstances" and that a failure to consider his claims will result in a fundamental miscarriage of justice.

CONCLUSION

WHEREFORE, he prays this court will grant his writ on the merits of his claims, vacate [redacted] his sentence, reverse and dismiss his conviction and prosecution under the facts and legal arguements presented.

Date; December 31, 2018.

Respectfully Submitted,

/s/ _____

Charles K. James, Jr.