

No. 18-8141

**ORIGINAL**

Supreme Court, U.S.  
FILED

FEB 21 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN TAYLOR — PETITIONER  
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAN TAYLOR 1919122

(Your Name)

WYNNE UNIT B1D FM 2R21

(Address)

HUNTSVILLE TEXAS 77349

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED:

1. WAS TRIAL COUNSEL INEFFECTIVE FOR NOT CALLING ALIRI WITNESS?
2. WAS TRIAL COUNSEL INEFFECTIVE FOR VIOLATING PETITIONERS DUE PROSSES OF LAW BY NOT OBJECTING TO THE STATE FOR AMENDING THE ENHANCEMENT ON THE DAY OF TRIAL, WITHOUT GIVING THE PETITIONER THE 10, TEN DAYS REQUIRED BY LAW TO PREPARE FOR TRIAL.
3. WAS TRIAL COUNSEL INEFFECTIVE FOR WITH HOLDING EVIDENCE FROM TRIAL THAT WOULD HAVE CHANGED THE OUT COME "EVIDENCE AFFIDAVIT SIGNED BEFORE A JUDGE OF SOMEONE OTHER THAN THE PETITIONER THAT COMMITTED THE CRIME.
4. DID THE PROCTATOR VIOLATE THE PETITIONERS RIGHTS TO A FAIR TRIAL BY NOT GIVING THE PETITIONER THE 10 TEN DAYS REQUIRED BY LAW AND DUE PROSSES OF LAW TO PREPARE FOR TRIAL.
5. DID THE COURT FOR THE WESTERN DISTRICT ARUSE ITS DISCRETION BY DISMISSING THE PETITIONERS SUPPLEMENTAL BRIEF ON PETITION TO AMEND AND ADOPT WITH NEW RELIABLE EVIDENCE "AFFIDAVIT SIGNED BY TRIAL COUNSEL THAT SHE HAD THE EVIDENCE"
6. WAS THE PETITIONER INTITAL TO DOUBLE JEOPARDY WHEN STATE GAVE TWO SENTENCES STACKED BUT UNDER ONE CAUSE NO: WITH NO SEPERATE EVIDENCE SAME ELEMENTS AND SAME COUNTS AND CHARGES FAILUER TO MERGE TWO SENTENCES TOGEAETHER AS ONE UNDER CRIMINAL EPISODE.

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## 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 AUTHORITIES CITED

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### STATUTES AND RULES

US. CONSTITUTIONAL 5th 6th 14 th AMENDMENTS  
 INEFFECTIVE COUNSEL, DUE PROSESSES OF LAW, DOUBLE JEOPARDY,  
 STATE LAW AND RULE ARTICAL 28.10

### OTHER

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 NO. 18-51053 ; 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 CASE NO. CIVIL NO: A-18-CV-671-RP ; 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 \_\_\_\_\_ 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 JAN. 17, 2019.

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 July 15, 1965, 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.  
  

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[ ] 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

PETITIONERS CONSTITUTIONAL RIGHTS WAS VIOLATED UNDER THE 5TH, 14TH 6TH AMENDMENTS.

THE UNITED STATES CONSTITUTION 6TH AMENDMENT SAYS THE PETITIONER IS HAVE EFFECTIVE COUNSEL .

PETITIONER HAS A RIGHT TO DUE PROSSES OF THE LAW UNDER THE 5TH AND THE 14TH AMENDMENT ,

CASE LAW: KIDD V. NORMAN, 654 F.3d. 947 (CA 8 2011) "SUPREAME COURT RECOGNIZED A HABEAS PETITIONER COULD PRESENT A CLAIM OF ACTUAL INNOCENCE AS A "GATEWAY" TO RESURRECTING PROCEDURALLY DEFAULTED.

PETITIONER GAVE THE COURT A COPY OF TRIAL COUNSEL AFFIDAVID OF HER SAY THAT SHE HAD THE NEW EVIDENCE AND DID NOT PRESENT IT TO THE COURT.

"RELIABLE EVIDENCE CAN BE EXONERATORY, SCIENTIFIC EVIDENCE, TRUSTWORTHY EYEWITNESS THAT WAS NOT PRESENTED AT TRIAL.

CARTAR V BIGALOW 2015 THE COURT ABUSED IT DISCRETION BY REFUSING TO ALLOW MR. CARTER TO SUPPLEMENT HIS HABEAS CORPUS WITH NEW EVIDENCE SAME AS THE PETITIONERS.

THE STATE AMENDED THE ENHANCEMENT ON THE DAY OF TRIAL IN VIOLATION OF THE PETITIONER RIGHTS TO DUE PROSSES AND THE STATE ART: 28.10 THE STATE DID DOUBLE JEOPARDY BY FAILING TO MERGE TWO OFFENSES UNDER THE BLOCKBURGER TEST PERSON V. WARDEN 2011 UD DIST LEXIS 145726.

DOUBLE JEOPARDY UNDER DORSEY V. BANKS 749 F. supp 2d 833 ND. OHIO MULTIPLE SEX CRIMES LISED IN THE INDICTMENT DEFECTED THE INDICTMENT UNDER THE SIXTH AMENDMENT ("WRIT GRANTED")

TRIAL COUNSEL FAILED TO CALL WITNESSES: GOMEZ V. BETO 462 F. 2d. 596 597 (5TH CIR 1972) SEE ALSO STEWART V. WOLFENBARGER 468 F.3d. 338-355-64 (6TH CIR. 2006) SEE HODGSON V. WARREN 622 F.3d. 591, 600-01 6TH CIR, 2010) SEE TOLIVER V. POLLARD 688 F.3d. 853, 863 (7TH CIR 2012) SEE BIGELOW V. HAVILAND 576 F. 3d. 284 (CA. 6 2009) FAILURE TO CALL ALIBI WITNESS GENERALLY CONSTITUTE IAC.

UNITED STATES V. SHABBAN 642 F.3d. 693,698 (DC CIR. 2008) <sup>11/10/08</sup>  
CASE REMANDED ON IAC FOR NOT CALLING ALIBI WITNESSES.

JAYNES V. GRACE 2006, US DIST LEXIS 94591 (ED PA 2006) COUNSEL  
FAILED TO PRESENT ALIBI WITNESS (WRIT GRANTED)

ARMSTRONG V. KEMMA 534 F.3d 837 (CA10 2008)

## STATEMENT OF THE CASE

THE PETITIONER WAS LATE TO FILE HIS 2254 HABEAS CORPUS BECAUSE HE COULD NOT GET TRIAL COUNSEL TO GIVE HIM A COPY OF THE AFFIDAVIT SIGNED IN FRONT OF A JUDGE THAT SOMEONE OTHER THAN THE PETITIONER DID THIS CRIME AS NEW EVIDENCE, TRIAL COUNSEL WOULD NOT CALL PETITIONERS ALIBI WITNESS THAT WOULD TESTIFY THAT PETITIONER DID NOT DO THIS CRIME. PETITIONER FILED A AMENDED PETITION TO ADD ACTUALLY INNOCENTS. THE PETITIONER WAS DENIED A FAIR TRIAL BY THE STATE AND THE TRIAL COUNSEL. IF THIS COURT WOULD REVIEW THIS CASE IT WILL SEE WHAT THE PETITIONER IS TRY TO SAY.

## REASONS FOR GRANTING THE PETITION

THE PETITIONER REQUEST THIS COURT TO GRANT THIS PETITION ON THE GROUNDS THAT THE PETITIONERS RIGHTS WHERE VIOLATED. THE PETITIONER IS NOT GOOD AT THE LAW BUT HAS PUT THIS THE BEST WAY THAT HE CAN SO THIS COURT CAN UNDER STAND THAT HIS RIGHTS WERE VIOLATED. THE PETITIONER STATES THAT IF HE WERE TO HAVE HAD A FAIR TRIAL WITH THE HELP A COUNSEL THAT THE JURY WOULD NOT HAVE FOUND HIM GUILTY TRIAL COUNSEL NEW THAT THE STATE AMENDED THE ENHANCEMENT WITH OUT GIVEING THE PETITIONER THE TEN DAYS REQUIRED BY LAW THAT WOULD HAVE PUT THE TRIAL DATE PAST 180 DAYS IN VIOLATION OF THE SPEEDY TRIAL ACT, AND WOULD HAVE HAD TO DISMISS THE CHARGES. THE PETITIONER WAS TAKEN TO TRIAL AGAINST HIS RIGHTS .

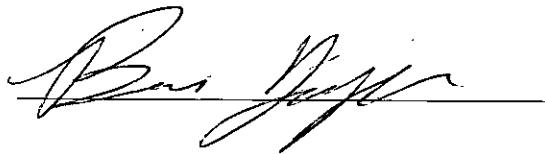
PETITIONER RESPECTFULLY ASK THIS COURT TO LOOK AT WHAT HE IS TRYING TO SAY AND GRANT HIM A HEARING WITH A COUNSEL THAT CAN HELP HIM TO GET THE COURT TO UNDER STAND HIM.

AS SHOWN WITH THE LETTERS FROM THE PETITIONERS APPEAL ATTORNEY DATED JUNE 8, 2015 HE WOULD HAVE WON MY APPEAL IF TRIAL COUNSEL WOULD HAVE OBJECTED TO THE STATE. SHE NEVER GAVE THE APPEAL ATTORNEY THE EVIDENCE FROM ~~Mr. Her~~

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian D. Jones". The signature is fluid and cursive, with "Brian" on top and "D. Jones" below it.

Date: 2-8-2018