RE: ELI VERNON, III, AKA ELI MIMS

V.

LORIE DAVIS, DIR., TX DCJ

NO: 18-8802

PETITIONER'S MOTION FOR REHEARING

Eli Vernon#1863499
Beto Unit 1391 FM 3328
Tennessee Colony, TX 75880

CERTIFICATE

Petitioner , Eli Vernon Mims III certifies that the grounds presented in this, his Motion for Rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

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

EXECUTED ON THIS 11 DAY OF AUGUST, 2019.

X Eli Vernon

GROUNDS FOR GRANTING PETITION FOR REHEARING

1) When the state court only summoned "181" potential jurors in Petitioner's case (Black Male) when county law set the jury pool at 200 potential jurors in every other case set for trial, in a county that is only 2% African American, The African American group was systematically-excluded when "19" potential jurors could have been African American had the set "200" potential jjurors been summoned.

2) The Petitioner as a result of the state's action was denied his Fourteenth Equal Protection Rights, Eight Right to be free from Cruel and Unusual Punishment, Six Right to public trial by impartial jury of the state and district where the crime shall have been committed; and right to effective assistance of counsel as the Constitutional Amendments guaranteed.

3) The jury was **not** drawn from a representative source because, the county law set the jury pool at 200 potential jurors. However, only "181" potential jurors were summoned in Petitioner 's case. Thus, counsel was ineffective in failing to object.

No. 18-8802

IN THE SUPREME COURT OF THE UNITED STATES

ELI VERNON MIMS

VS

LORIE DAVIS

CERTIFICATE OF GOOD FAITH

Now comes Petitioner, Eli Mims, and makes certification that his petition for rehearing is presented to this court in good faith pursuant to Rule 44. Mr.Mims further states the following:

1. This court entered its judgment denying petitioner a Writ of Certirari on June 17, 2019. Petitioner did not receive notice until June 24, 2019 Petitioner believes that he presents this court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay. Furthermore, petitioner believes that based upon the law of this court and facts of this case, Mims is entitled to relief which has been unjustly denied to him. He further believes that if the Fifth Court of Appeals are continually allowed to apply Strickland standard improperly, a number of people will be denied their constitutional right to due process.

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

Executed on this 16 day of July, 2009.

X Eli Vernon III

PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

Comes Now Petitioner, Eli Vernon, III a/k/a Eli Mims, Pro Se, and prays this court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Fifth Circuit Court of Appeals. In support of petition, Mr.Mims states the following.

STATEMENT OF FACTS

At trial B.J Ellis testified that on November 14,2012 he was at a gas station in Weatherford TX when the Petitioner tried to sell him jewelry. He testified the Petitioner showed him receipts from Gordon's Jewelers in an attempt to prove the jewelry was real. He testified he was told that the jewelry was purchased with a stolen credit card, and the Petitioner was willing to sell the jewlry for pennies on a dollar. Ellis believed the Petitioner was involved in criminal activity, and reported the incident to the dispatcher. Ellis reported that the Petitioner was driving a black Chevy Malibu. However, the Petitioner was driving a Black Chevy Impala.

After switching to a different dispatcher she relayed to Captain Ray and officer Cryer that a black suspect driving a black chevy malibu had attempted to sell a 911 caller a stolen credit card.

Officer Cryer testified he turned on his red and blue strobelights and searched for the suspect's vehicle. He said when he did pull up behind the Petitioner, he had not broken any traffic laws up to this point. The Petitioner accelerated, believing he was being chased by

someone who'd robbed him on a prior occasion, driving the same make and model of car that was behind him. The petitioner lost control of his vehicle, and wrecked it. Officer Cryer testified when he approached the Petitioner inside the vehicle ,weapon drawn, the Petitioner was heard stating, Didn't Know It Was You." A search of the vehicle found no stolen jewelry, invoices for the jewelry found, and fake receipts from Gordon's Jewelers. No credit card was found.

At trial, the Jury Pool consisted of 53 persons, out of 200 according to the State.(However the Petitioner found that the State Court provided incorrect information regarding the number of potential jurors that were summoned. The Petitioner found that only "181" potential jurors were summoned.(19 potential jurors could have been african american)) 3/4 of those notified for jury duty failed to appear. As stated in the State's Response to the Petitioner's 11.07 state habeas. this was normal. and the trial judge was aware of it. No blacks were in the jury pool. which according to State's Response to Petitioner's state habeas was also normal. The only other race , was hispanic and was struck for cause.

At trial the jury charge was read to the jury failing to give the mens rea that the Petitioner knowingly and intentionally fled from someone he knew was a police officer. The defense alibi was that the Petitioner did not know it was a police officer when he fled. He though it was robbers. The State stated they did not have to prove why the Petitioner fled there was no objection by defense counsel.

At trial. the defense counsel requested a directed verdict due to the failure of the state to prove at trial that police had reasonable suspicion to stop Petitioner. The trial judge took the capacity of the jury in deciding an issue legislature holds is the judge's duty. and denied the Motion despite various caselaw presented by defense counsel. and no caselaw presented by the State.

At trial. defense counsel was ineffective for failure to object to unconstitutional jury selection procedures denying Petitioner a jury of his peers; failure to object to indictment and jury charge for failure to give proper mens rea. failure to object to prosecutor's jury argument that they were not required to prove reason why - Petitioner fled. as this issue was the heart of the defense. Such denied the Petitioner effective assistance that did affect the outcome of the trial.

Thereafter. the Texas 11th Court of Appeals reviewing judge changed testimony in order to support his decision to affirm the conviction. After the State Courts denied the state habeas. the Federal Court held that the State-Court's rejection of the Duren claim was reasonable in light of the evidence. and in line with Supreme Court precedent on the issue. And further held Petitioner "failed to introduce any evidence establishing that the representation of African Americans on Perker County venires is not fairly and reasonably related to the number of such persons in the community who are qualified to sit on a jury. Duren does not require that "juries actually chosen must mirror the community." The Court cited Taylor. 419 U.S. at 538 Thereafter. held that counsel was not ineffective when applying the appropriate deference to the state courts' implied factual findings

. and having independently reviewed Petitioner's claims in conjuction with the state court records. it does not appear that the state court's application of Strickland was objectively unreasonable. There was no legal basis for counsel to object to the composition of the jury pool or the sufficiency of the indictment or request an instrution under TCCP art 38.23(a). Counsel is not required to make frivolous or futile motions or objections.(citations ommitted).

FAILURE TO OBJECT FRIVOLOUS OR FUTILE?

The Petitioner was subjected to a voir Dire of 52 caucasians and one hispanic veniremen. The State stated that 200 jurors had been summonded, yet only 53 showed up. This is false and violates Napue, the Petitioner has explained to this court that only "181" potential jurors were summonded.

this excluded "19" potential african americans from potentially being chosen. The state admita this is normal and that the trial judge knows this, there is nothing said nor shown that the state has made any efforts to correct the on-going problem. The county law set the jury pool at "200." However, the Petitioner was deprived of that law because he only had 181 summonded. See the Jury Pool list supported with the Petition.

MAINTAINING THE INTEGRITY AND FAIRNESS OF THE SYSTEM ?

The result is the Jury is not composed of a Fair cross-section of the community. This Honorable Court has assured us that the Sixth Amendment secures to criminal defendants the right to be tried by an impartial jury drawn from sources reflecting a fair cross section of the community. Taylor v.Louisiana, 419 U.S.552, 95 S.Ct.692, 42 L.Ed.2d 690 (1975)

To not carry out your duty to protect these constitutional rights is a miscarriage of justice.

REASONS MERITING REHEARING

The District Court, The Fifth Circuit Court's decision is clearly in conflict with Strickland v.Washington, 466 U.S. 668 (1984); and Williams v. Taylor, 529 U.S.362 (2000), emphasizing that in determing Strickland's prejudice, the court must examine both the trial testimony and the post conviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probabilty of a different outcome, in that the Fifth Circuit Court was made aware that the state had made a " material" false statement regarding the number of jurors summonded and to leave a 50 plus year old man to rot in prison when surely he was denied Due Process and Equal Protection because as the State Court has pointed out " The county law set the jury pool at 200."

The Petitioner was shorted a stagering "19," potential african american jurors. Petitioner has not murdered anyone. He has not put anyone in the dirt. He has had faith in the judicial system look at all of filings.

BURDEN SHIFTING DUREN & BASTON

The Petitioner is pleased to learn that this court has recently granted relief in Curtis Flowers case in a 7-2 decision written by Justice Kavanaugh. In part the removal of prospective jurors deprived Flowers of a fair trial. However, any way that human eyes can see. The exact same, however artfully different. The Petitioner had prospective jurors removed because everyone else who stood trial in Parker County Texas had "200" people summonded when Petitioner only had 181 summoned when only 2% of the county is African American.

With all due respect to Mr.Flowers whom dodged death due to Baston violations. The Appellant/Petitioner didn't even have the Baston err

because the Duren v Missouri burden of production help the state block him.

The Justice system cannot possibly pay attention to all of the dotted I's and crossed T's for we are all human. But, if this court does not respond and allow the lower courts to 97% of the time hold counsel not to be deficient is a miscarriage of justice. The 6th Amendment counsel should have recognized that there were... not 200 potential jurors summonded in his client's case... If a 50 plus year old man can acheive such, from a congested Texas Prison, with no media access, surely counsel should have. Had counsel objected it may very well may have shedded some light on such.

This court has an ethical duty by the United States Constitution to establish the law of the land and to assure the Citizens of the United States of America that the lower court apply the law. When they do not, **it is this court's obligation to HOLD THAT COURT ACCOUNTABLE and see to it that justice is administered fairly.**

50 years in prison for a 50 plus year old man is a death sentence in Texas when he has to do 30 years before he is given an opportunity to receive the "privilage," of parole.

SUGGESTIONS IN SUPPORT OF REHEARING

The Fifth Circuit, The Northern District Court, and such decison that the Petitioner did not at the least show that counsel was deficient for failing to object to the composition of the jury panel is incorrect and unfair and the Petitioner unfortunately has been delt a unfair ha nd all the while that 19 potential jurors could have made a big difference, the 5th circuit was notified about it in a motion

for rehearing and the Petitioner is highlighting it in this motion for rehearing. The determination made in this case is unreasonable , a unreasonable determination of the facts in light of the evidence presented. It has been a very bumppy and wavy road for the Petitioner and Petitioner knows that he has come to a cliff, accordingly this court must grant Rehearing of its judgment entered on June 17, 2019 and which the Petitioner received June 24, 2019, and issue a Writ of Certiorari to hold the Fifth Circuit accountable for failing to properly apply the law of this Court and grant Mr.Mims relief.

The Petitioner has been assisted by fellow inmate Milton Lee.Gardner who is incarcerated also at the Beto Unit and assist Petitioner's, pursuant to Johnson v. Avery. And request that the court take judicial notice that the Allegations in this rehearing, may be inartfully pleaded, however, it's a cry for justfce in this final chapter. Please hold Gardner and the Petitioner Mims to less stringent standards than formal pleadings drafted by lawyers. Hughes v. Rowe, 449 U.S. 5,9 (1980).

CONCLUSION

For the reasons stated above, Mr.Mims prays the court GRANT Rehearing.

Respectfully,submitted

X Eli Vernon Mims

On behalf of Petitioner

X Milton Lee Gardner

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed from Beto Unit prison,postage prepaid on 7/16/2019

X Eli Vernon Mims