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NO. 18-8949

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

HAKIM MUHAMMAD
Petitioner

Supreme Court U.S. FILED JUN 20 2019 OFFICE OF THE CLERK

v.

MARTY ALLEN et. Al.
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH
CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING

HAKIM MUHAMMAD
1117447
BALDWIN STATE PRISON
P.O. BOX 218
HARDWICK, GA. 31034

Petitioner pro-se

TABLE OF CONTENT

Table of CONTENT	1
Certificate of compliance	3
Table of Authorities	1
Petition for rehearing	6
Statement of facts	6
Reasons Meriting Rehearing	9
Suggestion in support	14
CONCLUSION	17
Certificate of Good faith	4

TABLE OF AUTHORITIES

U.S. V. BAGLEY 473 U.S. 667 (1985)	9
KYLES V. WHITLEY 514 U.S. 419,	9
HARRIS V. NELSON 394 U.S. 286 (1969)	10
RAINES V. U.S. 423 F.2d 526 (4th Cir 1970)	10
SLACK V. MCDANIEL 529 U.S. 473 (2000)	10
STRICKLAND V. WASHINGTON 466 U.S. 668 (1984)	12
SMITH V. ROBBINS 528 U.S. 259	12
FLOYD V. VANNOLY 814 F.3d 143 (2018)	12
CONE V. BELL 556 U.S. 449 (2009)	12
HOUSE V. BELL 547 U.S. 518 (2006)	13
SCHLUP V. DELO 513 U.S. 298 (1995)	13
U.S. V. CRONIC 466 U.S. 648	13
ANDERSON V. JOHNSON 338 F.3d 392 (6th Cir 2003)	14
PROVERBS 21:13	17
HOLY QURAN 26:181-183	17
JOHNSON V. U.S. 544 U.S. 295 (2005)	5

RULES

SUPREME COURT RULE 44	4
RULES GOVERNING SECTION 2254 CASES IN DISTRICT COURTS	
RULE 6 AND 7	11

TABLE OF CONTENT - CONTINUED

STATUTES

28 U.S.C. 2255
28 U.S.C. 2254
18 U.S.C. 3006 A

7
8
16

APPENDIX

EXHIBIT - A	Order denying certiorari
EXHIBIT - B	Order of District Court opinion denying relief
EXHIBIT - C	COPY OF SCHUP V. DELO 513 U.S. 298
EXHIBIT - D	COPY OF FLOYD V. VANNOY 887 F3d 214 (5th Cir 2018)
EXHIBIT - E	COPY OF HOUSE V. BELL 547 U.S. 518 (2006)

NO. 18-8949

IN THE UNITED STATES SUPREME COURT

HAKIM MUHAMMAD
Petitioner, Pro-se

v.

CEDRICK TAYLOR, et al.
Respondent, Warden

CERTIFICATE OF GOOD FAITH NOT FOR DELAY

COMES NOW, Petitioner, Hakim Muhammad and makes this his Certification that this petition for Rehearing is presented to this Honorable Court in good faith and not for delay, pursuant to Rule 44. Mr. Muhammad further states the following: He is Actually Innocent.

1. This Honorable Court entered its Judgment denying Petitioner writ of Certiorari on May 28, 2019. Petitioner is rightfully, not only innocent of the charges of his conviction, but that, although he is not an articulate lawyer, he has presented to this Honorable Court, as diligently as humanly possible, considering his confinement, evidence that adequately questioned that bases of his guilt and the reason the court, on collateral review, ignore the evidence he presents to be granted a full and fair hearing in support of his claims of innocence, and adequate grounds to justify the granting of rehearing and the prayer of relief

he now seeks and that this Petition for Writ of Certiorari Rehearing is brought in good faith and not for delay, and this Honorable Court should look at this petition in a more liberal fashion, however poorly written and presented as he is indigent and suffers from mental disabilities, as opposed to a petition presented by a trained and experienced attorney, in light of his impairment, Johnson v. U.S. 544 U.S. 295, 311, 125 S.Ct 1571, 161 L.Ed. 2d 542 (2005).

Furthermore, Petitioner believes that based on the law of this Great law established by this Honorable Court, that evidence he presents of the decision of the lower courts do not pass "the Smell test" and the precise reason this Court should hear again Mr. Muhammad prayer and he is entitled to relief which has been unjustly denied him, as he has steadfastly, since the beginning of this ordeal, maintained his innocence, and that the Writ should be granted and either release him or remand to the lower court to conduct a full and fair hearing to ascertain the depth of his constitutional violations of his 5, 6, 14 amendment rights, to be retried or released with his freedom and liberties fully intact.

He further believes that if the Eleventh Circuit Court of Appeals is allowed to continue to apply the principles of the Strickland standard and this Honorable Court rules for Certificate of Appealability as stated in Slack v. McDaniel improperly, a number of people will be denied their constitutional right to due process of law.

I declare under penalty of perjury that the foregoing is true and correct, and supported by the record.

EXECUTED, this day the 10th of July, 2019

Hakim Muhammad, Pro-se
#1117447

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Hadi M.

PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

COMES NOW, Petitioner, HAKIM MUHAMMAD and prays this Honorable Court grant a rehearing pursuant to rule 44 and there-
after grant the writ of Certiorari to review the opinion of the
ELEVENTH Circuit Because Mr. MUHAMMAD is actual INNOCENT of
the crimes he was convicted for and the courts on Collateral
review in particular the State habeas court, have denied him
a full and fair hearing to support his claims and a fundamen-
tal miscarriage of justice has resulted. In support of his claims
Muhammad states the following:

STATEMENT OF FACTS

Mr. Muhammad trial started on October 18, 2010, a Jury
returned a verdict of guilt on October 21, 2010, Muhammad then
represented at trial by Steven Purvis was replaced at sentencing by
Bo Worthington and also for motion for new trial stating three
grounds reflecting evidentiary insufficiencies, and later was
replaced by Charles Evans, who came to see Mr. Muhammad at the
County Jail to discuss aspects of his case, and subsequently submitted
a motion for trial by jury and a motion to compel discovery, later
withdrawing those motions on March 28, 2011 and filing his own motion
for new trial stating three grounds, inadmissibility of evidence
and three grounds relating to evidentiary insufficiency, then on
July 1, 2011 amended his own motion for new trial ^{six} grounds
of inadmissibility of evidence, two ground related ^{evidentiary}
insufficiencies, and for reasons unbeknown to Muhammad grounds
four and five are unknown, but ground six was deficient represent-
ation by counsel, under the fifth, six, and fourteenth amendment.
On August 4, 2011 the trial court heard arguments for motion for new
trial, Mr. EVANS only arguing the inadmissible evidence and the
insufficient evidence ignoring the deficient performance, trial court
denied motion same day.

On September 21, 2011 Mr. EVANS submitted a brief to the
Georgia Court of Appeals who forwarded brief to the Georgia Supreme

Court, only submitting the grounds of evidence contrary to verdict, arguing the Medical Examiner Dr. Geoffrey Smith testified that the injuries to Shelia Muhammad is not specific to strangulation and that he was unable to identify who her assailant was and the forensic biologist Cynthia Woods testified that Muhammad D.N.A. being were discovered could possibly be because as Muhammad testified, he had removed it as opposed to applying it. and the arson case was dissimilar to murder, Mr. Evans did not forward a copy of his brief to Muhammad nor discuss the issue Muhammad felt relevant to preserve his rights. The Georgia Supreme Court denied Direct Appeal on April 14, 2012, Mr. Evans notified Mr. Muhammad via mail on May 13, 2012 in a letter dated May 8, 2012 that the Georgia Supreme Court denied review or direct appeal.

Next, Muhammad filed a timely petition for State habeas corpus pursuant to 28 U.S.C. 2255, subpoena to four witnesses trial counsel Steven Purvis, appellate counsel Charles Evans, Deputy John Humer of Rockdale Sheriff, and State witness Hakeem Davis, and requested an evidentiary hearing, filing pro-se.

On June 13, 2013 only Mr. Evans answered the subpoena and testified at that hearing. prior to decision of that court Muhammad made motion to force the court to compel the three remaining witnesses to appear, as during a telephone call witness Hakeem stated that prosecutors gave him the words to testify too at trial and that Mr. Purvis attempted to get him to testify that Muhammad followed Mrs. Muhammad to the scene scene and he was willing to stand before court to this. at the state hearing Mr. Evans acknowledged that Muhammad told him of issues with a inconsistent statement before and at trial of witness Hakeem. The state habeas Judge ~~could~~ heard a second hearing on June 2014, but rescheduled do to inability to locate all the witness, and held the hearing in July 2014 at which only Steven Purvis appeared, (second hearing was held on August 14, 2014) and Mr. Muhammad was force for reason that do not withstand analysis forced to appear in four point restraints and ask by Judge what reason of the witnesses and to amendments Muhammad place, and was prevented from resorting to his notes at which time this Judge ask the Attorney General the need for witnesses and amendment to motions, which he couldn't answer.

that Judge stated he was not going to hold another hearing, the State habeas corpus was denied. Next Muhammad petition for a federal habeas corpus pursuant to 28 U.S.C. 2254, requesting an evidentiary hearing, under the grounds of deficient performance of counsel at trial and on appeal and insufficient evidence, to name a few although he presented seven grounds in his state and federal habeas corpus, and prior to the district court review of his claim and after objecting to the Magistrate report and recommendation to dismiss, Muhammad receive a letter from state witness Hakeem Davis that stated that, in part, prosecutors told him to say what he testified to and counsel wanted him to say additionally that his dad followed Mrs. Muhammad to the crime scene, Mr. Muhammad immediately without making a copy forward this letter in his motion for a stay and Abeyance, motion for discovery to acquire an deposition and motion to expand the record to include its findings under Fed. Rules of civil procedure rule 6.7 to ascertain whether this new evidence was grounds for relief and supported his grounds in his petition of due process violations, Ineffective assistance of counsel and whatever else might come to light and to help the district in its determination if an evidentiary hearing was needed and Muhammad be granted a new trial or release, the district court denied relief and a C.O.A, his motions for discovery and expansion without addressing the not notarized letter from state witness Hakeem.

Next Muhammad sought a timely filing for a C.O.A. to the Eleventh Circuit raising the same grounds under *Slack v. McDaniel* and *Miller-El v. Cockrell*, the Eleventh circuit Denied the C.O.A. Although the district court made an erroneous determination of fact that state witness deputy John Hunter appeared at the state habeas hearing on August 14, and deferred the affirmation of guilt of the district court.

REASONS MERITING REHEARING

AT Mr. Muhammad state habeas corpus hearing held June 13, appellate counsel Mr. Evans acknowledged that Muhammad told him ~~issues~~ related to the testimony of deputy HUNTER, Hakeem and crime scene technician Amanda Pilgrim, Mr. Evans made no inquiry into whether Hakeem or any of the other witnesses for the state false testimony would be fruitless or meritorious, as he testified at the hearing "he didn't see the relevance of the driver/passenger distinction" although post-trial counsel have contact information on Hakeem, were due to the circumstances of the case Muhammad had not, the facts in the record at trial support that Hakeem gave two different versions of events, moreover the fact that trial counsel proffered testimony from this witness is at least a tacit admission of its relevancy and Mr. Evans should of felt compelled to at least talk to Hakeem or his mother and grandmother which Hakeem notarized statement Muhammad received on collateral review had produced newly discovered evidence that compromised, at least the integrity of the proceedings, and no assessment was made by Mr. Evans or any court to determine its materiality, the reason why Muhammad submitted the whole original letter, maybe wasteful, but for the court to examine the evidence and the state to address the evidence since from the beginning of this ordeal Muhammad has maintained his innocence and evidence of guilt was not overwhelming when looking a second ~~glance~~ glance the witnesses and the allegations asserted by Muhammad, couple with allegations by this witness of trial counsel, Mr. Purvis, failure to investigate and this new allegation of conspiracy of Mr. Purvis to convict Mr. Muhammad.

The materiality of this testimony this court announced in U.S. v. Bagley 473 U.S. 667 (1985) where this court held that regardless of any difference of exculpatory or impeachment evidence... favorable evidence is material and constitutional error results from its suppression by the government if there is any reasonable probability that had the evidence been disclosed the results of the proceedings would be different. Kyles v. Whitley 514 U.S. 419, 433, 34 & showing of materiality does not require demonstration by a preponderance

That disclosure of the suppressed evidence, in this case evidence that Muhammad returned back to his home, would result in defendant acquittal, that is, based on the presence of reasonable doubt or acceptance of an explanation for the crime that does not inculpate the defendant, U.S. v. Bagley 473 U.S. 667, 685 (1986) there, this court set the touchstone of materiality "whether he received a fair trial resulting in a verdict worthy of confidence" Bagley 473 U.S. @ 678.

Hakeem was the only testimony that contravened Mr. Muhammad testimony that he returned back to marital home unbeknown to Hakeem, a jury made aware that the witness testimony was suborned would be reasonably troubled by the adjustment in his pre-trial statement and the bases for the change, as he "didn't see which way they went cause his bus came" making it reasonably credible he did return back to the marital home. Presenting strong evidence of innocence and the court cannot be reasonably satisfied that this and the connection with deputy Humer testimonial only evidence, where state witness investigator Brandi Jones and homeowner Paul Lee independently contradict the deputy's testimony along with a license private investigators observations that make this view highly impossible. and taken in light of the victim keys to her vehicle were discovered by detectives on her person, not in her vehicle, not on Muhammad but clearly and convincingly supports that she drove her own vehicle and no witnesses to witness the couple arriving at the crime scene together.

A jury or court made aware that prosecutors impermissively coached a fourteen year old, who just lost his step-mother who cared for him, to give false/misleading testimony against his father would also have been troubled by the refutation of deputy Humer false/misleading testimony with the facts of the two state witness alone, in addition, to if counsel had of just secured the photo, which would reveal that Muhammad testimony was credible that he had a running conversation with deputy that's reason deputy knew about the front door since counsel proffered testimony from him for it and he testified he didn't walk through house to ascertain any kind of the layout of house, and the rest of the states case, supporting on appeal the imperative need for and certified deposition from Hakeem and three elements of evidence that support appointment of counsel to competently investigate this matter. This was not harmless error and the court should have and was required

Under Harris v. Nelson 394 U.S. 286, 300 (1969) Expanding the record and Rule 6 citing rules for discovery and the lack of methods for securing information in habeas proceeding, the court pointed to an alternative @ 295 See also Raines v. U.S. 423 F.2d 526, 529-30 (4th Cir 1970) Authorizing expansion to eliminate some unnecessary hearings.

Muhammad presents to this court that counsel should, and was required to present these evidentiary facts to a reasonable fact finder as these elements question Muhammad guilt. The Eleventh Circuit merely examined the opinion of the district court which stated facts in light most favorable to the prosecution and misstated facts and ignored all factually reliable contrary evidence in violation of this court holding in Stack v. McDaniel 529 U.S. 473, 146 L.Ed 2d 542, 120 S.Ct 1595 (2000) where in determining whether to issue a c.o.a. for a issue that was procedural defaulted has two components. One directed at the underlying constitutional claim and one at the district court procedural holding, each part is a threshold inquiry, for example the district clearly stated in its opinion that deputy John Huer testified at Muhammad habeas corpus state hearing, there is no record of any witnesses testifying at Muhammad state habeas corpus hearing except trial and appellate counsel who could not be expected to acknowledge their own deficient performance. if deputy had appeared he would of been confronted with the private investigators report investigators Jones and homeowner Paul Lee testimony contradicting his testimony in the record in addition to the rule 6 discovery of the recreated vantage point view which in summation, without this testimony at state habeas hearing and confronted with such facts he could not have said anything of significance without being trapped by his own inconsistencies.

The district court did not conduct an assessment of whether appellate counsel did any investigation at all or made a decision to cease all investigation upon obtaining some evidence actually demonstrated reasonable professional judgement, the court merely assumed, in addition to misstating facts in the record of deputy Huer testifying at state habeas hearing, that any investigation was adequate in light of the record.

Exhibit B @ Lexis 17

This assumption caused Mr. Muhammad a fundamental miscarriage of justice and reflected an objectively unreasonable application of this Court holding in Strickland v. Washington 466 U.S. 668, 690-91 (1984) "where strategic choices made after less than complete investigations are reasonable precisely to the extent that reasonable investigations support professional judgment and the limitations on investigations" In Smith v. Robbins 528 U.S. 259, 145 L. ed 2d 756, 120 S. Ct 746 this Court remanded for the Ninth Circuit to evaluate Robbins ineffective assistance of counsel claims, "where it may be that his appeal was not frivolous and thus he is entitled to a merits brief," as Mr. Muhammad should have in this case," and clarity was needed as to how strong those issues were under Bagley."

The eleventh circuit decision is clearly in conflict directly with its sister circuit, the fifth circuit, Floyd v. Vanhook 814 F3d 143, 156 (5 Cir 2018)² where that court reasoned that newly discovered evidence, finger print cards labeled by detectives as not petitioners was suppressed, this case is similar both factually and legally, that the same result reached in Floyd must be reached also in Muhammad case Floyd @ 163 Favorable evidence often will turn on the context of the existing or potential record, Kyles v. Whitley 514 U.S. 419, 439. this court defined evidence tending to strengthen a defense as favorable under Brady, See Cope v. Bell 556 U.S. 449, 470, 129 S. Ct 1769, 173 L. ed 2d 701 (2009) and again, this court has held evidence impeaching a prosecution witness is favorable brady evidence Bagley 473 U.S. @ 676 any reason to support a conclusion the evidence was not favorable to Floyd is contrary to this courts precedent and therefore, an objectively unreasonable application of clearly established federal law. for example this court said in Kyles @ 450 "a withheld list of license plate numbers, which excluded defendant vehicle from the crime scene interestingly was exculpatory and impeaching evidence, on the police assumption, argued to the jury that the killer drove to the lot and left his car (at the scene), the list without the defendant registration would obviously have help defendant and would have had some value in countering an argument by the prosecutors that a

² exhibit D John Floyd v. Darrel Vanhook 887 F3d 814 (5 Cir 2018)

grainy enlargement of a photograph of the crime scene showed defendant car in the background, this evidence impeached the investigators testimony.

In House v. Bell 547 U.S. 518, 216 S.Ct. 8064, 165 L.Ed2d 1 (2006) "A Jury concluded that the murder was committed in the course of a rape or kidnapping, so the evidence that blood found on victim could be a likely factor in persuading the fact finder not to let him go free" ~~to~~ House v. Bell 547 U.S. 518, 554³ and consider the case in Schlup v. Delo 513 U.S. 298, 115 S.Ct. 851 (1995) which is also similar to this case where two prison guards gave conflicting accounts of the timing of the events surrounding the stabbing of an inmate. the Court, on certiorari, relied upon the statement of another inmate that exonerated the inmate Schlup as opposed to the guards statement that implicate Schlup. as the inmate statement was supported by other evidence the counsel ignored and Muhammad case should be handled the same way as ignored evidence clearly contradicted testimonial only evidence of which if evidence had of been discovered of the testimonial evidence it would have been exonerating to Muhammad for example Hakeem newly discovered evidence that prosecutors suborned his testimony would not contradict that he returned back to marital home, if deputy Veil had of been recreated with a photo his testimony would of had no impact on a reasonable fact finder, the medical examiner Dr. Smith testimony that the victim Mrs. Muhammad appear to be in a intense struggle with assailant, see autopsy report, and he couldn't identify assailant and Muhammad photos of his hands and body show no signs of intense struggle, the report of C.S.T. Amanda Pilgrim contradicting her testimonial only allegation were suppress along with her supervisor Lt. Wolfe report also contradicting her report, the Jury should of been allowed to assess on their own these report in the determination that support Muhammad innocence that "he didn't do it" and ineffective assistance of trial counsel in conspiring to convict. In U.S. v. Cronk 466 U.S. 648, 665 this Court address its not whats prudent or appropriate but what is constitutional compelled.

Exhibit E House v. Bell page 9

Exhibit C Schlup v. Delo 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed2d 803 (1995)

IN Anderson v. Johnson 338 F3d 392 (5th Cir 2003) There is no evidence that counsel decision to forego investigation was reasonable at all... Counsel failure to investigate was not part of a calculated trial strategy but likely the result of either indolence, ineptitude or incompetence. Under the circumstances here the state had the burden to show a strategy supporting the failure to investigate and gather evidence for Muhammad to maintain his innocence and the circumstance in this case, because it failed to do so, Muhammad has clearly met the performance prong of Strickland @ 687-88. This court said in Schlup @ 332 a federal court must assess the probative force of the newly discovered evidence in connection with the evidence of guilt adduced at trial, because the eleventh circuit and the district court evaluated the record under an improper standard. Further proceedings are necessary, as the court used an unreasonable determination of fact.

This court has an ethical duty by the United States Constitution to establish legal precedent of the law of the land and to ensure the citizen of this great land that their courts apply the law, when they don't it is this court obligation to hold that court "accountable" and to see to it that justice is administered fairly, this Honorable court must hear this and hold the eleventh circuit accountable for failing to properly apply the law of this Honorable court to prevent a fundamental miscarriage of justice and provide relief where relief is do or any means appropriate.

SUGGESTIONS IN SUPPORT OF REHEARING

This court should look at the assessment of the district court that appellate counsel's decision not to even talk to state witness Hakeem, his mother or grandmother, and look to the evidence in the record proffered at trial by counsel and state witnesses of deputy Haver alleged view supports that the district court did not assess whether Mr. Evans did any investigation at all or made decision to cease all investigations upon obtaining some evidence actually demonstrated reasonable professional judgement, in light of the record, Strickland @ 690-91 here the district court based it's

decision to affirm guilt upon the testimonial only evidence of deputy Haver testimony, and had appellate counsel obtained a deposition from Hakeem the newly discovered evidence prosecutorial misconduct and ineffectiveness of trial counsel for failure to investigate would support Mr. Muhammad innocence or in the alternative at least warrant a new trial as these testimonial only evidence where the only elements that contradicted Muhammad defense that he didn't do it, nor was there to commit or take part in crime and evidence of guilt mistus these testimonies was not overwhelming and the court on collateral review used these testimonies to affirm guilt. Mr. Evans acknowledged Muhammad told him of issues in question, Muhammad efforts by help of pro-bono assistance of a state licence and registered private investigator observations support his diligence despite the fact of his incarceration and his indigent ~~statutes~~ status to acquire some evidence on his own of the deputy's testimony submitted in his original writ of certiorari is a showing of substantial evidence the deputy's testimony was false and Hakeem in writing the letter although not-noterized supports that he is willing to swear to his statement before any court and was willing during state habeas proceeding but for state interference, and he has met the prerequisites showing under Harris V. Nelson to complete discovery and a deposition was needed as the nature of the testimony gave the appearance of a guilty party to a crime making the testimony material under this Court holding in Bagley, where Muhammad had a running conversation with deputy so it would better explain how deputy knew about the front door since his own testimony said he didn't walk through house to ascertain any layout when questioned about his view of stairs, and Hakeem testimony that he didn't see which way his parents went after leaving driveway does not contradict that Muhammad was not brought back to the marital home unbeknown to Hakeem therefore establishing his actual innocence and the keys to victim's car were found on her person, and anything else would be pure conjecture not in the record, and he did not go to the crime scene with his wife and once there was not running away from deputies.

Moreover the timing of events that morning according to the testimonies of the two children were Javonte Kennedy the couples.

Youngest son, testified that his bus came late and both children and Muhammad agree that Javonte's bus comes before Hakeem's making the timing for Hakeem's bus to be more accurately to 7:20 A.M. this coupled with the five minute walk between the two houses and Medical Examiner Dr. Smith's testimony that death by brain occurs in about ten minutes, it's improbable for Muhammad to get to crime scene, since no evidence supports he came there with his wife and no witnesses, commit an attack upon her by the many abrasions and furrows and a contusion to her jaw to cause the death by strangulation in ten minutes straighten his appearance before deputies arrive, where neither deputy testified Muhammad appeared out of breath or disheveled in appearance.

Muhammad prays he has presented to this Honorable Court a persuasive strong showing of his actual innocence due to constitutional error of newly reliable evidence from trustworthy eyewitness accounts and critical pieces of evidence of due process violations and ineffective assistance not presented at trial and that this honorable court cannot justifiably have confidence in the outcome of the trial or subsequent proceedings and that the proceedings were not error free as Mr. Muhammad was denied a meaningful opportunity to present his constitutional claim by a state court and he should be allowed to pass through the gateway and argue the merits of his underlying claims with the assistance of competent counsel under 18 U.S.C. § 3006A.

CONCLUSION

For the reason stated, this court Must grant Rehearing of its Judgement entered on May 28, 2019, and issue the Writ of Certiorari to hold the eleventh circuit accountable for failing to properly apply the law of this great land, and grant Mr. Muhammad the relief he seeks of remand or release, as he is inarticulate and cannot properly defend himself, despite his actual innocence.

Should Mr. Muhammad prayer for Justice not be heard and relief denied, may this Once Honorable Court also cry not be heard "for whoever shuts their ears to the cry of the poor will also cry themselves and not be heard" Proverbs 21:13.

And give full measure and be not of those who diminish, but weigh with a true balance, and wrong not men of their dues, and act not corruptly in the earth making mischief" Holy Quran 26:181-183.

Respectfully Submitted

Hakim M.

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NO. 18-8949

IN THE SUPREME COURT OF THE UNITED STATES

HAKIM MUHAMMAD

Petitioner, Pro-se

V.

CEDRICK TAYLOR, et. al.

Respondent, warden

CERTIFICATE OF COMPLIANCE WITH RULE 44
OF THE SUPREME COURT

COMES NOW, Petitioner, Hakim Muhammad and makes this his certificate that his petition for Rehearing are to substantial grounds not previously presented. to wit:

1. Whether Mr. Muhammad has made a truly persuasive strong showing of actual innocence pursuant to Schlup v. Delo 513 U.S. 298 to overcome his procedural defaulted grounds of 5.6.14 amendment violations

2. What constitute a sufficiently strong showing of actual innocence that would allow ~~either~~ for review of his underlying constitutional claims pursuant to Schlup v. Delo 513 U.S. 298 (1995)

I declare under penalty of perjury that the foregoing is true and correct, and supported by the record.

EXECUTED THIS 10th day of JULY 2019.

Hakim M.