No. 18-9147

IN THE SUPREME COURT OF THE UNITED STATES

DONALD G. FLINT - PETITIONER

vs.

LORIE DAVIS - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

DONALD G. FLINT
TDCJ No. 1509401
2665 Prison Rd. #1
Lovelady, Texas 75851

QUESTIONS PRESENTED

1) WAS THE FEDERAL DISTRICT COURT'S FINDING AND THE FIFTH CIRCUIT COURT'S FINDING CONTRARY TO THE PRECEDENT OF THE SUPREME COURT, AS WELL AS A VIOLATION OF THE UNITED STATES CONSTITUTION 5TH AND 6TH AMENDMENTS?

2) WAS PETITIONER'S GUILTY PLEA UNINTELLIGENTLY made when he wasn't PROPERLY ADMONISHED UNDER BOYKIN v. ALABAMA, 89 S.Ct. 1709 (1969). A SILENT RECORD SUPREME COURT PRECEDENT?

LIST OF PARTIES

[X] ALL PARTIES APPEAR IN THE CAPTION OF CASE ON THE COVER PAGE.

TABLE OF CONTENTS PAGE

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES

STATUES AND RULES

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 JUDGEMENT BELOW.

OPINIONS BELOW

[x] FOR CASES FROM FEDERAL COURTS;
THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEAR AT APPENDIX A TO THE PETITION IS
[x] IS UNPUBLISHED

THE OPINION OF THE UNITED DISTRICT COURT APPEARS AT APPENDIX B TO THE PETITION AND IS
[x] IS UNPUBLISHED

STATEMENT OF JURISDICTION

The district court and the court of appeals for the fifth circuit denied Petitioner's request for Certificate of Appealibity. In Hob v. United States, 524 U.S. 236 (1998) this Court held that pursuant to 28 U.S.C. § 1254 (1) the United States Supreme Court has jurisdiction on Certiorari, to review a denial of a request for a certificate of appealibility by circuit judge or panel of a court of appeals.

STATUTORY PROVISION INVOLVED

The right of a state prisoner to seek federal habeas is guaranteed in 28 U.S.C. § 2254. The standard for relief under the "AEDPA" is set forth in 28 U.S.C. § 2254(d)(1).

STANDARD OF REVIEW
DENIAL OF CERTIFICATE OF APPEALIBILITY

In MILLER-EL v. COCKERLL, 537 U.S. 123 S.Ct. 1029 (2003) this Court clarified the standard for issuance of a certificate of appealibility [hereafter "COA"], a prisoner seeking a COA need only demonstrate a substantial showing of a constitutional right. A prisoner satisfies this standard by showing that a jurist of reason could disagree with the district court's resolution of his constitutional claim or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further...we do require Petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after COA has been granted and the case has received full consideration that Petitioner will not prevail. Id 123 S.Ct. at 1034, citing SLACK v. McDANIEL, 529 U.S. 473, 484 (2000).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment
6th Amendment
Article 32.01 Texas Code of Criminal Procedure
Article 28.6 Texas Code of Criminal Procedure
Article 28.061 Texas Code of Criminal Procedure
28 U.S.C. § 2254(d)(1)&(2)
28 U.S.C. § 1254(1)

STATEMENT OF CASE

Petitioner was arrested on December 15, 2004, after an interview with the Texarkana police department on December 16, 2004 he was released on bond. On the same day he hired attorney David Lashford. Fourteen (14) months later Petitioner was indicted. Petitioner was convicted on March 6, 2008 in the 202nd District Court of Bowie County, Texas of aggravated sexual assault of a child and received a 50 year sentence. The Texas Appeals Court for the Sixth District affirmed his conviction on August 7, 2009. The Texas Court of Criminal Appeals refused his petition for discretionary review on May 5, 2010. Petitioner filed a state habeas application challenging his conviction on January 27, 2011. The Texas Court of Criminal Appeals denied without a written order on May 16, 2012. Petitioner filed his federal habeas petition on May 23, 2012. The district judge denied the federal petition on October 7, 2014.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI SUPREME COURT RULE 10

(a) A UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT MATTER; HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A DECISION BY A STATE COURT OF THE LAST RESORT OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISOR POWER;

(b) A STATE COURT OF LAST RESORT HAS DECIDED A IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH DECISIONS ON ANOTHER STATE COURT OF LAST RESORT OR OF A UNITED STATES COURT OF APPEALS;

(c) A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN,BUT SHOULD BE SETTLED BY THIS COURT OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

QUESTION NUMBER ONE

1) WAS THE FEDERAL DISTRICT COURT'S FINDING AND THE FIFTH CIRCUIT COURT'S FINDING CONTRARY TO THE PRECEDENT OF THE SUPREME COURT AS WELL AS VIOLATIONS OF THE UNITED STATES CONSTITUTION'S 5th and 6th AMENDMENTS?

The Petitioner's appeal for a COA is based on the holding of the Supreme Court William v. Taylor, 120 S.Ct. 1495 (2000), and the Fifth Circuit Young v. Dretke, 356 F.3d 616 (5th Circuit) (2004).

(1) Stated determination that counsel deficient performance in not moving to dismiss untimely indictment did not prejudice Petitioner was contrary to unreasonable application of Supreme Court precedent.

(2) Deficient performance by counsel resulting in denial of substantive or procedural right required application of Strickland outcome determinative prejudice test not lesser standard.

(3) Habeas Court was bound by State court conviction in determining outcome determinative test not lesser standard.

(4) Habeas court was bound by state court implicit finding that state court could not have shown good cause for pre-indictment delay reverse and remanded Young v. Dretke 356 F.3d 616, 617 (5th Circuit 2004).

Petitioner relies upon the decision of the U.S. Supreme Court and the 5th Circuit Court of Appeals in support of this claim Young v. Dretke, 356 F.3d 616, 627 (2004), William v. Taylor, 529 U.S. at 391-93 (2000). A review of the facts, the evidence and the law clearly satisfies the ADEPA requirements showing that this claim constitutes both an unreasonable determination of the facts in light of the evidence presented, as well

as, unreasonable application of Strickland. The Fifth Circuit relying on the ruling in Taylor, supra stated that (The Supreme Court) leaves no doubt that where deficient performance denies the Petitioner a substantive or procedural right which he is lawfully entitled, prejudice is to be determined routinely under the second prong of Strickland. Id at 627.

Article 32.01 Texas Code of Criminal Procedures states when a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation, the prosecution, unless otherwise ordered by the court for good cause shown, supported by affidavit, shall be dismissed, and the bail discharged. The dismissal would have been with prejudice under article 28.06 Texas Code of Criminal Procedure, where, after the motion or exception is sustained it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented he shall be fully discharged.The magistrate judge argued under 28.061that Petitioner could have been reindicted. This was not true. Art. 28.061 discharge for delay states the following: If a motion to set aside an indictment, information or complaint for failure to provide a speedy trial is sustained. The court shall discharge the defendant. A discharge under this article is a bar to any further prosecution for the offense discharged and for any other offense arising out of the same transaction, other than an offense of a higher grade that the attorney representing the State and prosecuting the offense that was discharged does not have the primary duty to prosecute. Under any statutory law the State could cite the Petitioner was entitled to dismissal with prejudice procedural rights he was entitled to.

QUESTION NUMBER TWO

WAS PETITIONER'S GUILTY PLEA UNINTELLIGENTLY and involuntarily made when he wasn't PROPERLY ADMONISHED UNDER BOYKIN v. ALABAMA, 89 S.Ct. 1709 (1969). A SILENT RECORD SUPREME COURT PRECEDENT?

Petitioner's guilty plea was unintelligently and involuntarily made in violation of this Court's holding in Boykin v. Alabama, 89 S.Ct. 1709 (1969), where the trial court failed to admonish Petitioner of his right against compulsory self-incrimination, his right to trial by jury, and his right to confront his accuser. This claim was grounded on the Supreme Court's holding in Boykin v. Alabama supra. The state court's finding that admonishment to be given before accepting a plea of guilty are not constitutionaly required is clearly contrary to well established Supreme Court law. The federal district court by not reversing Petitioner's case has clearly decided a important federal question in a way that conflicts with the precedent of this Court, requiring the Supreme Court to exercise it's supervisory powers to not do so, threatens the entire fabric of our constitutional appeals process. When lower courts are allowed to ignore their own precedents, precedents based on the holdings of the UNITED STATES SUPREME COURT. Then where is the credibility and integrity in the system? In U.S. v. WILLIAMSON, 183 F.3d 458 the court plainly errs when it commits (1) an error, (2) that is plain and obvious, (3) that affects defendants substantial rights, even if the district court plainly errs, the court of appeals should exercise it's discretionary power to review and correct the error, if leaving it uncorrected would seriously affect the fairness, integrity, or public reputation of judicial proceedings.

This is what happened in the instance Petitioner's case. This type of error not only affects this Petitioner, but undermines the entire judicial process from arrest to habeas corpus and eventually petition for writ of certiorari.

CONCLUSION

Based on the foregoing, Petitioner PRAYS, that this COURT grant the Petition for Writ of Certiorari and order full briefing.

DATED: 11-6-18

Respectfully submitted,

Donald G. Flint

DONALD G. FLINT
TDCJ No. 1509401
2665 Prison Rd #1
Lovelady, Texas 75851