18-9163

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Phillip L. Horrell – PETITIONER
(Your Name)

vs.

Michael D. Downey – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Phillip Lee Horrell
(Your Name)

3050 Justice Way
(Address)

Kankakee, IL 60901
(City, State, Zip Code)

N/A – prisoner
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Whether the Seventh Circuit Judges used an erroneous CoA standard in determining if a CoA should issue, as the Court has proscribed in Miller-El v. Cockrell 537 U.S. 322 (2003); and in Buck v. Davis 137 S.Ct. 759 (2017).

2. Whether the issue of the Schlup gateway's applicability to the exhaustion doctrine was wrongly adjudicated by the district court, and wrongly not considered by the Seventh Circuit, and should be reviewed as a question of great importance by the Supreme Court, to answer an unanswered question of habeas law regarding a petitioners actual innocence, and ability to have "unexhausted" claims heard via the Schlup gateway — as typical "defaulted" claims may be.

3. Whether the Seventh Circuit Judges erred in not reviewing the petitioners filed amendments to the application to the CoA (motions), and/or the motion to include a § 455(a) issue with a CoA; and deprived petitioner of consideration of those pleadings.

4. Whether the district and Circuit court erred in failing to properly address and acknowledge petitioners new evidence (i.e., exhibit #5) that evidences the alleged sanity report he clearly pled GBMI pursuant to (i.e., exhibit #4) as false evidence of his criminal responsibility, of the type which clearly violated Miller v. Pate 386 U.S. 1 (1967), by the defense attorneys, and courts utilization of it to obtain his plea.

5. Whether the federal district court and Court of Appeals have erroneously failed to allow relief of that clear error, and wrongful conviction, by way of an involuntary plea (#4).

QUESTION(S) PRESENTED

6. Whether the district courts analysis of petitioners motion to stay state court proceedings (per §2251(a)) was factually and legally erroneous, and whether the seventh circuits failure to adjudicate petitioners renewed motions for a stay—or expeditious review of the district courts denial of a stay of state court proceedings was error, and should be adjudicated by this Court to provide guidance on the matter (e.g., only one such caselaw, cited by the petitioner, i.e., Levine v. Torvik 986 F.2d 1506, 1518-19 (9th cir 1993), is substantially similar regarding such a stay) — and also whether the denial of a stay should be reversed by this court to avoid the habeas petition becoming moot, and federal habeas jurisdiction defeated, by a denial in the state court post-plea motion hearing scheduled for 6-13-19.

7. Whether petitioners request for an evidentiary hearing and argument thereon in the district court—for the 14th Amendment substantive due process—fitness issue, was erroneously not acknowledged and ruled on by the district court and the seventh circuit, as petitioners argument is a very colorable one (as delineated in the motion in response to respondents motion to dismiss habeas petition, filed 5-30-18) — and if the Court could remedy that issue, to allow adjudication of it.

8. Whether the knowing use of false evidence (ground one); and the denial of psychiatric assistance under Ake v. Oklahoma (ground two); and false stmts at the plea (ground seven) warrant supervisory power.

QUESTION(S) PRESENTED

9. Whether the Seventh Circuit Judges dismissal and denial of a COA on the §2253(c)(2) grounds was an erroneous decision when the district Courts dismissal was on procedural grounds, and the cause should have been remanded to a district Court Judge for the parties to brief the issues and a proper merits-based adjudication occur, as opposed to the petition being ended by the Circuit courts denial on Constitutional grounds, which was not the issue which the district court denied the petition on, in its 10-16-18 dismissal order. Was that action by the Seventh Circuit panel of Judges reversible error, and was it tantamount to the erroneous COA standard causing a denial of a COA, as in Miller-El and Buck?

10. Whether a habeas petitioner with an inordinate delay of State court proceedings and an inability to have a direct appeal as to his contentions of error (until an estimated 7½ years after sentencing in the instant case) can have the exhaustion requirement excused by a showing of actual innocence under the Schlup framework, via the Courts decision in House v. Bell — or if the instant petitioners habeas case should serve to clarify that application of Schlup's gateway to the exhaustion doctrine, and join that line of cases to provide guidance on the matter, and a remedy.

QUESTION(S) PRESENTED

II. If petitioners argument that the state court corrective (FL S.Ct. Rule 604(d)) process is ineffective to protect his due process rights under Ake v. Oklahoma, to present a complete defense of insanity, to a fundamentally fair trial, and to a direct appeal that comports to due process and equal protection, i.e., petitioners 14th Amendment and 6th Amendment rights — as argued in ground nineteen and pursuant to the §2254(b)(1)(B)(ii) exception argument — bears merit, should petitioner be given a stay of state court proceedings to ensure federal habeas jurisdiction, or should other action by the Court be provided so that petitioner may be ensured that §2243 can provide appropriate relief?

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:

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APPENDIX G Application for a CoA, filed 11-13-18; includes argument on 19 grounds for relief, actual innocence/Schlup gateway issue, stay of state court proceedings argument, and substantive due process/fitness.

APPENDIX H Motion to withdraw guilty plea (as per Ill. S. Ct. Rule 604(d)), filed 8-15-18, and pending hearing scheduled for 6-13-19. Includes 604(d) affidavit w/ exhibits attached.

APPENDIX I Indictment, statement of state's Attorney, and mittimus (judgement) for case No. 12CF541.

APPENDIX J Certified copy of docket sheet, and additional docket sheet showing entries at start of case, not on certified copy — for Kankakee Co. Case No. 12CF541 (underlying state case w/ habeas proceedings at issue here).

TABLE OF AUTHORITIES CITED

CASES | PAGE NUMBER

Total of 33 cases cited in petition are set forth on the following pages

STATUTES AND RULES

federal statutes cited:

28 U.S.C §§ 2254; 2243	pgs 10,21; 03,21,22
28 U.S.C. § 2254(b)(1)(B)(ii)	pgs. 10,21,22,23,03
28 U.S.C § 2253(c)(2)	pgs 02, 14, 21
28 U.S.C. § 2251(a)(1)	pg 01
28 U.S.C. § 455(a)	pgs 00,12,13,20

Illinois statutes cited:

720 ILCS 5/6-2(a)+(e)	pg 11
720 ILCS 5/104-14	pg 7

~~OTHER~~

IL Supreme Court Rules:

S.Ct. Rule 604(d)	pgs 10,12,20,23,03
S.Ct. Rule 605(b)	pgs 10,12,20
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CASES CITED

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U.S. Supreme Court caselaw:

Illinois state caselaw:

Additional U.S. Supreme Court caselaw:

federal Circuit court caselaw:

State caselaws - other jurisdictions:

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 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 B 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

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

The date on which the United States Court of Appeals decided my case was March 11, 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: April 2, 2019, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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 _____.

[ ] 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

United States Constitution:

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy trial 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 defence.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or Naval forces, or in the Militia, when in actual service or time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution (cont..)

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 priveleges 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.

Provisions of the United States Code

28 U.S.C. § 2251(a)(1): A Justice or Judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgement or after final judgement of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

28 U.S.C. § 2253(c)(2): A certificate of Appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2243: The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Provisions of the United States Code Cont...

28 U.S.C. §2254(b)(1)(B)(ii): An application for a writ of habeas corpus on behalf of a person in custody to the judgement of a state court shall not be granted unless it appears that (B)(ii): there are circumstances that exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. §455(a): Any Justice, Judge, or Magistrate Judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Illinois Compiled Statutes

720 ILCS 5/6-2(a) + (e): (a): A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct. (e): When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the state to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

STATEMENT OF THE CASE

This state habeas case involves a very rare and unusual set of circumstances, procedural posture, federal constitutional claims, and unique injustices that the federal courts have not properly considered or adjudicated — and have erroneously and wrongly foreclosed any merits-based review of petitioner's well pled and meritorious procedural and constitutional issues — as demonstrated in the Appendix. This case involves a state case presenting violations of the defendant's U.S. Constitutional rights under Pate v. Robinson; Drope v. Missouri; Ake v. Oklahoma; Napue v. Illinois; Miller v. Pate; Brady v. U.S.; North Carolina v. Alford; Boykin v. Alabama; Strickland v. Washington; Cronic v. U.S.; Buchanan v. Kentucky; and other Supreme Court applicable precedent such as Nix v. Whiteside. Some precedent, e.g., Napue and Nix, apply in that the principle flowing from them extend to the violations present in this case, which are so unusual and rare that the Supreme Court of the United States has never dealt with and decided the exact issue presented here. One such violation, e.g., is that defense counsel deceived petitioner — a seriously mentally ill defendant in 2012–2013 — to believe that he received a sanity evaluation in conjunction with the fitness (two-day) evaluation the defense arranged (and the court granted and paid 5K for) at the start of the case, in Nov. 2012.

STATEMENT OF THE CASE

These statements are all clearly proven by the transcript of state court proceedings (334 pgs, filed on 12-8-17 in the district court + referred to in pleadings as EXH#1); and the relative reports and documents petitioner submitted, e.g., the alleged sanity "report" petitioner pled guilty pursuant to — is EXH#4; the new e-mail evidence that petitioner filed on December 8, 2017 (dated 10/5/17; 10/6/17; 10/28/17; and 10/30/17) which evidence Dr. Orest Eugene Wasyliw stating that the "report" petitioner pled guilty to is a forgery as he "was not involved" in petitioners' underlying state case "at any time" — is EXH #5 (along with an affidavit in support by my great aunt Maria V. who e-mailed Dr. Wasyliw); and the fitness report from the Isaac Ray Forensic Group evaluation which evidences that petitioner never received a sanity examination — EXH#32. On August 21st 2013 defense counsel introduced the fraudulent sanity "report," and visited petitioner on August 25th 2013 for the stated purpose of disclosing the findings, which are only false legal conclusions, which the record shows is allegedly based solely on an unauthorized review of fitness "records" by "Dr. Wasyliw", in violation of Section 104-14 and the attorney-client privilege (See, e.g., people v. Sutton 316 Ill App 3d 874, 888 (1st dist 2000); and people v. Knuckles 165 Ill 2d 125 (1995)); and possibly HIPAA laws, as no consent was given by petitioner to anyone in his state case, at any time, to procure or release any mental health or medical records. On October 30th 2013, defense counsel persuaded petitioner to

enter a GBMI plea under the false pretense that the petitioners sole defense of insanity was unavailable due to the unfavorable "results" contained in the "report" bearing an electronic signature of Dr. Orest Wasylciw; who made himself clear in October 2017, i.e., EXH #5, that he was never involved in petitioners case (please see copy of Affidavit in Appendix that was filed with the application for a COA on 11-13-18 for details about obtaining e-mails from Dr. Wasylciw, etc) — and that petitioners felony-murder charges disqualified him from his insanity defense, as stated in the six sentence "report," that is EXH #4. At the 11-1-13 change of plea hearing, the trial Judge and 1st chair APD (i.e., Judge Clark E. Erickson and Lawrence S. Beaumont) made several false statements in line with the knowing use of the 100% fraudulent sanity "report," which told petitioner he was: **A.** properly found sane by an examination for that purpose at the Isaac Ray Forensic Group, "by Dr. Wasylciw" — **B.** there were multiple "reports" tendered for fitness + sanity "by Isaac Ray"; **C.** there were four doctors involved there; and **D.** that Isaac Ray + Dr. Wasylciw rendered an unfavorable "opinion," which was stated as a legal conclusion that "there was not a basis for a defense of insanity," which the 1st chair APD endorsed also as "correct," and no-one present (i.e., the other 3 attorneys) corrected. The record and relevant reports (e.g., EXH #32) demonstrate that those

★please note: all relevant t-scripts are in Appendix D

statements, during the plea colloquy, i.e., pgs 4, 5, 40-41, 43, +46; by the Judge, 1st chair APD, and lead ASA are all 100% false statements designed to mislead me, foreclose my sole defense falsely, and remove my option of trial and ability to make a voluntary, intelligent election as to trial with my defense. Illinois has a caselaw law that is a safeguard designed to protect trial rights for the defendants who decide to forego an insanity defense— an inquiry and waiver of the defense of insanity which is designed to avoid the exact problem here, whereas an insane defendant erroneously waives his insanity defense, unknowingly and unintelligently (see, e.g., people v Gettings 175 Ill App 3d 920 (4th dist 1988). That law would have effectively served to protect petitioners due process rights under Ake v. Oklahoma; Boykin v. Alabama; Brady v. U.S.; North Carolina v. Alford; Miller v. Pate; Napue v. Illinois, etcetera. This petitioners mental state (or sanity) at the time of the offense was the only issue. A similar Ake reversal, in the context of I.A.C., is Curry v. Zant 258 Ga 527 (S.Ct. Ga. 1988) — but this habeas case involves the knowing use of false evidence to obtain an involuntary plea of GBMI by the petitioners own counsel, and the entire court (collectively). There was no sanity exam. There wasn't (nor is there) any unfavorable sanity opinion rendered by

anyone, on 11-1-13 — except the Judge, and endorsed as "correct" by the lead APD. Only one report was tendered by Isaac Ray — a fitness report filed on 1-9-13. So my rights under Ake were clearly violated, as a defense (and two State) motion(s) for an expert on the issue of sanity were granted — yet instead of providing petitioner with "access" to a psychiatrist on that issue in the following eight months and almost 2 wks (when the 1st chair defense counsel introduced the bogus "legal" sanity report) — the defense and State chose to instead perpetrate a very bold on-record fraud on the defendant, which the trial Judge chose to fully participate in, on-record (at the Nov. 1st 2013 plea hearing, supra), and simply wrongly convicted petitioner by way of an involuntary guilty (GBMI) plea, with no psychiatric assistance at all, on the issue of criminal responsibility. Not only is this state habeas petitioner convicted in total denial of due process of law — it was a blind plea, and there was no: **A.** "deal," and no **B.** Judicial confession (See, e.g., amendment to ground Seven denial, filed on 1-4-19, under heading: "plea is constitutionally infirm"; see people v. Logan 2019 IL App(3d) 160540 (#38-40) citing people v. Green 17 Ill 2d at 42 (1959)); and no admission of guilt was made to the essential elements of felony murder predicated on residential burglary, or of intent to kill — or of any facts probative of legal sanity during the

STATEMENT OF THE CASE

petitioners stmt. of the offense for the factual basis (see pgs 35-39 of November 1st 2013 transcript) — and the evidence adduced at the plea and sentencing hearings do not satisfy the requirements for a factual basis under IL law (See, e.g., people v. Barker, 83 Ill 2d 319, 327-28 (1980)); or the reasonable doubt standard, of In re Winship. Petitioners plea does not satisfy the prerequisites of a valid guilty plea set forth in Bradshaw v. Stumpf — and involves the very issue involved in Henderson v. Morgan also, making for an involuntary plea. These issues are well pled in the habeas pleadings, and additionally, petitioner's direct appeal rights under the 14th amendment have been violated due to inadequate admonishments of my due process appeal rights pursuant to the Supreme Court Rule 605(b) violation (see April 14th 2014 transcript, pgs 99-102) and defenses violation of my Rule 604(d) rights in 2014. These violations are set forth in detail in the amendment to the request for a COA, filed on 12-17-18 — and details how the district courts decision utilized incorrect legal standards (directly opposite than the correct precedent), factors in its erroneous [redacted] analysis, etc. — concerning the exception to exhaustion argument pursuant to §2254(b)(1)(B)(ii). The in ordinate, unjustified delay clearly meets the standards to excuse exhaustion, by any Circuits standards. The following facts are the cause for this state habeas

petitioners extremely unusual procedural posture — one in which the Supreme Court of the United States may not confront for decades to come, especially with these constitutional, and procedural habeas issues. This petitioner was deceived by his counsel that he'd been examined for sanity, found "sane," and that his charges disqualified him from the insanity defense. The record demonstrates this. The Court chose to partizipate, and wrongly convicted petitioner of felony-murder and attempted murder — and gave petitioner an unauthorized natural life sentence plus 30 years, consecutively. And the real, actual evidence adduced does not prove petitioner guilty; under either standard — Rule 402(c) or reasonable doubt. And all of the evidence is probative of insanity under IL law (see, e.g., 720 ILCS 5/6-2(a)+(e); see people v. Kando 397 Ill App 3d 165, 196 (1st dist 2009)). Petitioner attempted suicide after the violent act, while in the residence, prior to opening a dresser drawer and handling its contents — and despite opportunity to steal, or kill both victims; the petitioner actually precipitated the EMT and response from police, by giving the address for the victim residence very shortly after the violent act, to his mom. The evidence

supports neither an attempted murder; felony-murder (as charged); or a defendant who was legally sane. Since the initial Rule 605(b) and 604(d) violations in April 2014, the Illinois Appellate Court remanded the cause to the trial court, for post-plea proceedings to begin anew. Petitioners post-plea remand proceedings began on 1-6-16, and are presently ongoing, three years and over 4 mos later. A hearing on petitioners Rule 604(d) motion — to withdraw the guilty plea (a copy was filed as an EXHIBIT with the request for a CoA on 11-13-18) is scheduled for June 13, 2019. If a stay does not issue, as requested in the district and circuit court — (please see "Renewed motion" for a stay, 19 pgs) the federal habeas petition will become moot by a grant of that 604(d) motion — and will injure petitioners habeas case, grieviously, if denied — as the de novo standard of review will change to the difficult AEDPA standard (for some or all of the contentions). If certiorari does not extend to this case, it wont matter as this habeas case will end. On 12-8-17 I filed my habeas petition in the Central dist. of Il. It was amended + refiled on 3-7-18. It was denied by a wholly erroneous dismissal order. N.O.A. was filed 11-8-18; and petitioner filed a request for a CoA (approx. 110 pgs) on 11-13-18. A motion to stay was filed, and renewed, in the 7th Cir. Three motions to amend the CoA req. (w/amendments) were filed in the 7th circuit. An additional issue for a CoA, i.e., §455(a), was requested in mid-late February in the 7th cir. by motion. A terse summary denial of a CoA "denying all pending motions" was ordered 3-11-19.

STATEMENT OF THE CASE

Petitioner filed a "petition for panel rehearing" that argued the five most substantial + important grounds — and sought consideration of the filed §455(a) motion issue, as well as the filed amendments to the CoA that were said to be "denied" pending motions, on 3-11-19. Frankly, the Seventh Circuit's CoA denial doesn't make sense, or fit with these solid U.S. Constitutional claims. If you'd read please the 16 page petition for rehearing, and give a look at the facts and circumstances involved in relation to the relevant legal principles — it is not reasonable, to myself, how at least 2 or 3 of those concisely pled (they are further delineated in the amended habeas petition, and initial application for a CoA also, filed 11-13-18) constitutional grounds are not pled to show the substantial denial of a constitutional right, pursuant to Miller-El v. Cockrell; Buck v. Davis; and 28 U.S.C. §2253(c)(2). This petitioner has never received merits-based review, and is plainly wrongly convicted. The U.S. Supreme Court decided Miller v. Pate in 1967 — since then, no tangible false evidence violation (e.g., the paint stained shorts in Miller, and the fabricated sanity "report" in the case at bar) has been adjudicated by the Court. The facts of record in this habeas case presents the very, very rare Miller v. Pate violation, by a defendant's own counsel introducing + utilizing it — with a guilty plea conviction — which is the norm these days. This case should

be adjudicated, to act as a boulwark against convictions that violate fundamental fairness — and a case for the Court to speak on the issue of the knowing use of false evidence in this manner, and that guilty pleas require the same level of respect for the law of the U.S. Supreme Court (as is at issue here, with regards to the cited cases) as cases regarding trials do. Surely, attorneys and Courts all accross the country wrongly convict defendants (mentally ill or not) by deception, and by fraudulent misrepresentations, (and documents as well), frequently in this country. This particular State habeas case is a very clear and incredible demonstration of such (please see copies of amendments to the COA — ground seven, and grounds one and seven — for a delineation of this).

The doors to merits review on my federal habeas petition have been erroneously closed on me, and petitioners issues are meritorious enough to warrant not only a COA, but certiorari also. Especially the issues of Ake v. Oklahoma; false evidence (and an involuntary plea resultantly); the delay of a direct appeal, precluding a redress of Ake violations (etc); and as focused on in the "reasons for granting the petition" section; the important applicability to the exhaustion doctrine of the Schlup gateway/actual innocence exception + denial.

REASONS FOR GRANTING THE PETITION

This pro-se petitioner's §2254 habeas corpus cases issues, as set forth in the questions presented, are exceptionally rare, unusual, and important for the Supreme Court to review and adjudicate; both for the importance of the legal issues presented, and to allow relief to the clearly erroneous and improper handling of this petitioners habeas case in the lower federal courts; to correct a manifest injustice, present here. The issues presented are made specifically clear by the arguments set forth in the filed (and erroneously denied) motions + petition for rehearing in the Appendices. Those arguments are very much worthy of a COA, even if an erroneous analysis (as proscribed by Miller-El) has occurred. This issue, as argued in the Appendix, is a very important habeas law matter that equals the import of the Courts decisions in Schlup v. Delo (applying the Schlup gateway to excuse an abusive or successive habeas claim); House v. Bell (applying the gateway to exhaustion, and procedurally defaulted claims specifically); McQuiggen v. Perkins (applying the gateway to excuse a habeas petitioner from AEDPA's statute of limitations); and Bousley v. United States (applying the gateway to pleas of guilty); which is presented in question #2. It is an unanswered question #10, present in only rare circumstances, about Schlup's applicability—

and which the district court and Circuit court have clearly mishandled, as the Court has made clear it is an issue that is meant to "correct a fundamentally unjust incarceration," and concerns the very "core of our criminal justice system." The district court ruled that the Schlup gateway doctrine "is inapplicable here" — and that it is only a "narrow exception to excuse procedural default" (See dismissal order of Central District of Illinois, at footnote 3, on pg 10 in Appendix B). That erroneous ruling was seemingly adopted by the 7th circuit, and this petitioner was denied an actual innocence analysis or exception (via Schlup's gateway) to his unexhausted claims. The district court's rationale that the Schlup gateway applies only to procedurally defaulted claims is both non-sensical and without citation to any authority. No federal court has ever confronted this issue — let alone held that schlups gateway applies to the doctrine of procedural default and not the doctrine of exhaustion; except the district court (supra) in this case, and the resultant denial of a COA by the 7th circuit without any analysis or ruling on the Schlup issue expressly. The Supreme Court's mention in McCleskey v. Zant 499 U.S. at 494; and Schlup v. Delo 513 U.S. at 314-15 that the petitioner may obtain review of his constitutional claims only if he falls within the "narrow class of cases... implicating a fundamental miscarriage of justice" is seemingly interpreted by the district court in its dismissal

order dated 10-16-18 to say that Schlup's actual innocence doctrine applies instead to only a "narrow exception to excuse procedural default." That is not the law. The Supreme Courts reference to the "narrow class of cases" relates only to the fact that the Schlup standard, as stated by the Court in House v. Bell 547 U.S. 518, 538 (2006), is "demanding and permits review only in the extraordinary case." But with no authority on the matter, district and circuit (fed) courts may interpret the Courts language to mean, as here, that the "narrow line of cases..." means what Judge Bruce stated in footnote 3 — denying state habeas petitioners of the actual innocence exception without even an analysis, and consideration of petitioners new evidence that he claims establishes his factual innocence under Schlup's framework, and should allow his unexhausted claim or petition to be heard by the district court. Here, there are two Schlup arguments, i.e., grounds ten and thirteen (and arguments in the seperate memorandum) of the §2254 habeas petition, which were disallowed an analysis. Also, a petitioner like myself is not at fault for the delay of proceedings in State Court (ie., over 5 yrs for a post-plea motion hearing — with no direct appeal from sentencing on 4-16-14, and a projected 7½ year delay for 1st direct appeal on any contentions of error); and for the unexhausted claims.

See, e.g., Appendix F, EXHIBIT 4

REASONS FOR GRANTING THE PETITION

Because of that fact, proven in the habeas pleadings & exhibits, and the fact that typical "defaulted" claims are wholly the fault of the petitioner (and are also unexhausted claims just the same, as they were not properly exhausted); it would produce an absurd, and unjust result for a petitioner who defaulted his claims and is, e.g., five years beyond sentencing — who was not wrongly deprived of a direct appeal (as this petitioner clearly was) and who was then afforded a Schlup analysis + actual innocence exception in habeas court vis-a-vis a petitioner who, as myself, was wrongly denied the ability to have a necessary Rule 60(d) motion to have a direct appeal, and five years after sentencing is still in the trial court, **unable to have any review of his meritorious federal Constitutional claims** — and is disallowed a Schlup analysis by the district court despite 3½+ years of a delay at the time of filing (i.e., 12-8-17) — and the Court of Appeals likewise shut the door on any review of either the Schlup issue, or any merits-based review. The district court Judge stated in the #3 footnote on pg 10 of the dismissal order "Here, petitioner has not yet presented his federal constitutional arguments for a full round of state court review, let alone procedurally defaulted any such claim." That misses the whole point; that state appellate review has not been available to me! And it misses the whole point & import of the Schlup line of cases also.

REASONS FOR GRANTING THE PETITION

The Schlup Gateway / Actual Innocence exception doctrine's applicability to the exhaustion doctrine is an unanswered question of habeas law which precluded this state habeas petitioner from being afforded an analysis in the district and Circuit courts pursuant to the Schlup framework — and being allowed to show factual actual innocence by dd, + the new evidence, coupled with a constitutional deprivation (e.g., ground two — Ake v. Oklahoma violation) to pass through the gateway and have my unexhausted claims (or petition) heard in the district court. There is no guidance — no caselaw that discusses the distinction between the procedural default and exhaustion doctrines, and the applicability to one versus the other — or to the exhaustion doctrine. Not one single habeas case that is published discusses the applicability of Schlup as such — because the circumstances necessary for the question to arise, as here, is extremely rare — yet this habeas petitioner advanced two Schlup gateway arguments from the start (i.e., 12-8-17). In Illinois, "strict compliance" with Supreme Court Rules 605(b) and 604(d) is required — and when counsel fails to properly certify compliance with Rule 604(d), or a judge fails to properly advise per Rule 605(b) (both of which occurred here), the Appellate court typically remands the cause (as here) for "Rule 604(d) compliance." It happens regularly.

REASONS FOR GRANTING THE PETITION

This petitioner's two actual innocence arguments are that, new evidence, coupled with the old, show him to be factually actually innocent as not guilty beyond a reasonable doubt (i.e., ground ten); and not guilty by reason of insanity (i.e., ground thirteen) — and petitioner has very strong, credible evidence and arguments (see, e.g., attachments to amendment to COA — ground seven — in Appendix F, EXHIBIT 5, for excerpts of Schlup gateway arguments from petition, as well as 11 pg. Schlup gateway & new evidence writeup also) which establish his actual innocence, if only an analysis were afforded! And what if the argument or arguments are the "narrow class of case" which demonstrates an incarceration that is fundamentally unjust? What if a dozen additional actually (or probably) innocent petitioners who also advance a Schlup gateway argument to excuse an unexhausted claim or petition this year in Illinois are wrongly told "**the Schlup doctrine is inapplicable here**," and are also denied the Supreme Court's gateway — and perhaps die in prison wrongly convicted? Here, I've argued from the start, repeatedly (see, e.g., amendment to COA — §2254(b)(1)(B)(i) — writeup in Appendix F, EXHIBIT 4), that the state corrective process is ineffective to protect my due process rights under Ake, etc., and to afford a proper remedy; though the federal courts can, pursuant to §2243. So if that

argument (in the petition in several places) is correct, i.e., expert opinion evidence that is accurate or at all credible (7 years or more after the date of offense) as petitioners mental disorder and psychosis is in full remission due to the continual treatment with psychotropic medications (all records were filed in the district court, and sealed, on 10-16-18); and petitioners mental state + psychological condition can no longer be assessed (obtained or) proximate to the time of the offense, and the mental condition existing then, as shown by the records to be major mental illness with psychosis — a fair trial (with the evidence necessary for a fair trial to occur) is not possible — and the remedy pursuant to Supreme Court Rule 604(d) (and an appeal per R. 604(d)) can allow the ability to plead anew at best. The federal courts power pursuant to §2243, however, can provide a just remedy, e.g., Gall v. Parker 231 F.3d 265, 336 (6th cir 2000) (Sixth circuit gave conditional writ instructing state trial court to proceed with post-NGRI finding-commitment proceedings, for likely NGRI acquittee and successful habeas petitioner); see also Turner v. Bagley 401 F.3d 718, 725 (6th cir 2005) (Sixth circuit gave unconditional writ to successful habeas petitioner with inordinate direct appeal delay-who could not be afforded a direct appeal that comports with due process/protects his rights). Exact problem exists here.

REASONS FOR GRANTING THE PETITION

This habeas case involves a state prisoner who is still in the post-plea stage over 5 years after being sentenced on April 16th 2014. A state petitioner who was deprived of a direct appeal by the 1st chair APD, and the trial judges failures and rights violations—and who sought habeas corpus relief after 3 years, 7 months of an inordinate, unjustified delay, after sentencing—and while on remand by the Appellate court. The petitioner's grounds for relief included 19 seperate grounds — the F.A.C. ground (#3) included 20 sub-sets of F.A.C. argued, which in the request for a COA were reduced to 5. The [redacted] circuit court denied a COA on constitutional (§2253(c)(2)) grounds, but the district court did not reach the merits at all—so the seventh circuit seemingly decided the merits of the petition, ending any actual merits based review and ending the appeal, while not addressing or taking issue with the defect identified and decided by the district court. Petitioners grounds for a COA easily do meet the proper standard for a threshold COA review, to allow for a COA by the Court of Appeals. The petitioners grounds are not "so utterly without merit" or "thoroughly lacking" (as stated by Chief Judge Wood in Jefferson v. Welborn 222 F.3d 286, 289 (7th cir 2000)) that this habeas proceeding should end.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Phillip L. Horrell

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