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IN THE  
SUPREME COURT OF THE UNITED STATES

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ARTHUR L. CAMPBELL,

Petitioner,

v.

SHERMAN CAMPBELL, Warden,

Respondent,

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PETITION FOR RULE "44" REHEARING

NOW COMES, Petitioner Arthur L. Campbell ("Campbell"), in his proper person, and pursuant to Rule 44 of this Court, hereby petition this Honorable Court for rehearing on his claim for a certificate of appealability (COA) as asserted in his original Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit which the Court denied on October 7, 2019, (Exhibit A, 10/7/19 Order attached hereto).

1. Campbell asserts that this Court should grant rehearing to review the claim presented in his petition to address whether or not this Court should, as a matter of fairness, revisit the standing in Buck v. Davis, 137 S.Ct. 759, 773 (2017), to decide whether or not the Sixth Circuit Court of Appeals overstepped the bounds of its jurisdiction, and inappropriately decided the merits of his appeal. See McGee v. McLadden, 139 S.Ct. 2608, 2611 (2019) (Sotomayor dissenting) (cited for substantial grounds not previously presented).

2, Campbell further asserts that the Sixth Circuit, rather than considering the merits of his habeas petition, should have granted him a COA to allow review of the District Court's conclusion that the AEDPA standard was not met.

3, This petition is submitted in "good faith" and not for delay,

#### STATEMENT OF THE FACTS

Petitioner, Arthur L. Campbell, is being held unconstitutionally in the prison of the State of Michigan. The unlawful confinement derived from a trial by a judge in the former Recorders Court of the City of Detroit, Michigan on October 21, 1986. He was convicted of second degree murder, assault with intent to commit murder, and possession of a firearm while in commission of the felonies listed. He was sentenced to 65 to 100 years, 50 to 75 years, and 2 years respectively. These are the unconstitutional convictions and sentences under attack in this petition.

Pertinently, Campbell's convictions are based on a fired shotgun shell put in evidence by police officer James W. Finch of the Detroit Police Department (DPD). Officer Finch testified that no reports were written regarding the fired shotgun shell he put in evidence. (See Petition for Writ of Certiorari, Appendix E, pp 23-26, 10/21/86 Trial Tr.)

On June 24, 2011, twenty six (26) years after Campbell's 1986 convictions, the Wayne County Prosecutor's Office (WCPO) disclosed the existence of a newly discovered "Property Book" maintained by the DPD Evidence Control which contradicts Officer Finch's testimony that no reports were written about the fired shotgun shell he put in evidence. The newly discovered property book is confirmation the state has exculpatory and impeachment evidence in Campbell's case; proof that the police intentionally

manufactured his guilt and the truth of his innocence suppressed. (See Petition for Writ of Certiorari, Appendix F and G, pp 27 and 28, WCPO 6/24/11 and 8/19/11 letters).

On June 6, 2012, a trial court judge granted a pro se post-appeal motion Campbell filed asserting, *inter alia*, that the suppression of the property book violated his right to due process under Brady, 373 U.S. at 87. The judge held further that Campbell had shown "good cause" and proven "actual prejudice because the DPD had withheld the existence of the newly discovered property book for 26 years. (See Petition for Writ of Certiorari, Appendix I, pp 30-31, 6/6/12 Trial Court Order).

On September 14, 2014, the trial court judge reversed himself and denied a new trial sua sponte. (See Petition for Writ of Certiorari, Appendix K, pp 38, 9/14/12 Evid Hrg,).

Campbell's state court appellate process on his Brady claims ended on September 29, 2014, when the Michigan Supreme Court denied reconsideration of his application for leave to appeal, People v. Campbell, 853 N.W.2d 335 (Mich. 2014).

After the District Court dismissed Campbell's habeas petition and denied a COA on February 5, 2018, the Court of Appeals for the Sixth Circuit declined to grant a COA, 28 U.S.C. §2253(c), concluding that jurist would not debate that his discovery of the "property book" in 2011 did not triggered a later start date of the statute of limitations under 28 U.S.C. § 2244(d)(1)(D). (See Petition for Writ of Certiorari, Appendix A, pp 4-6, 6/29/18 Order).

Campbell filed an application for a COA to Justice Sotomayor with his petition for a writ of certiorari affixed on January 14, 2019, (Exhibit B, Application to Justice Sotomayor). The petition was place on the docket

on May 29, 2019, but the application for a COA to Justice Sotomayor was detached from the petition and returned to Campbell on May 31, 2019, (Exhibit C, Supreme Court Clerk's May 31, 2019 letter).

Justice Sotomayor issued a dissenting opinion from denial of certiorari and denial of a COA on June 28, 2019, in McGee v. McFadden, 139 S.Ct. 2608 (2019). This Court denied certiorari on October 7, 2019.

#### Basis and Grounds For Rehearing

WHETHER THE QUESTION OF WHETHER CAMPBELL IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION WAS SHORT SHRIFT WHEN SIFTING THROUGH THE HAYSTACK OF PRO SE FILINGS?

#### The Standard of Review:

Campbell asserts that the appropriate standard of review for this claim is the standard announced in Brady v. Maryland, 373 U.S. 83 (1963), where this Court ruled that, under Brady, the state violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. 373 U.S. at 87.

Pro se Petitioner Arthur L. Campbell argues that his trial and resulting draconian sentences were fundamentally unfair because the state withheld material exculpatory and impeachment evidence. See Brady v. Maryland, 373 U.S. 83, 87 (1963). A State trial court judge determined that Campbell had shown "good cause" and proven "actual prejudice" because the Wayne County Prosecutor's Office Conviction Integrity Unit disclosed a newly discovered "Property Book" on June 24, 2011, the existence of which the Detroit Police Department had withheld since October 21, 1986. (See Petition for Writ of Certiorari, Appendix K, pp. 30-31, 6/6/12 Trial Court Order).

The District Court denied Campbell federal habeas relief, and both the District Court and the U.S. Court of Appeals for the Sixth Circuit decline

to grant Campbell a "certificate of Appealability" (COA), 28 U.S.C. § 2253(c), concluding that the new discovery of the property book on June 24, 2011, did not meet the burden imposed upon Campbell under 28 U.S.C. § 2244(d)(1)(D), to permit him to use the subsection as a trigger to restart the statute of limitations. (See Petition for Writ of Certiorari, Appendix A, pp 4-6, 6/29/18 6th Cir. Order.)

The claim sought for rehearing is a constitutional inquiry under the Fourteenth Amendment and should be addressed by this Court under the decision announced in Brady v. Maryland, 373 U.S. 83 (1963), because the State withheld material exculpatory and impeachment evidence. That is, the Detroit Police Department's (DPD) suppression of a "property book" until June 24, 2011, deprived Campbell of fundamental due process and a fair and balance trial in 1986, 373 U.S. at 87. Without a COA, Campbell cannot obtain appellate review on the merits of his newly discovered evidence claim.

Interestingly, both the District Court and the Sixth Circuit ignored the state trial court judge's finding regarding Campbell's Brady claim; that the property book was newly discovered evidence was supported by a letter dated August 9, 2011 from an Assistance Prosecuting Attorney (APA). (See Petition for Writ of Certiorari, Appendix I, pp 30-31, 6/6/12 Trial Court Order.) The discovery of the property book in 2011, contradicts testimony Officer James W. Finch gave at trial in 1986, that no reports were written about the fired shotgun shell he put in evidence. (See Petition for Writ of Certiorari, Appendix E, pp 23-26, 10/21/86 Trial Transcript.) Campbell was not aware that Officer Finch's testimony was false until he acquired the APA's letters in 2011. See Napue v. Illinois, 360 U.S. 264, 269 (1956).

(discussing how a jury on retrial might view new impeachment evidence), gave at trial was perjured

Campbell was entitled to rely on the testimony Officer Finch gave at trial, that no reports were written regarding the fired shotgun shell he put in evidence. See Banks v. Dretke, 540 U.S. 668, 696 (2004) ("in the context of disclosing evidence, "[o]rdinarily, we presume that public officials have properly discharged their official duties."). Therefore, it was the actual knowledge of the existence of the property book that started the clock running in 2011 when the property book was discovered to support Campbell's Brady claim.

Campbell cites Justice Sotomayor's dissenting opinion in McGee v. McFadden, 139 S.Ct. at 2611, for the proposition that:

"[U]nless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down. A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction."<sup>111</sup>

As in McGee, the case at bar provides an illustration of what can be lost when COA review becomes hasty. Campbell case was docketed, and his application to Justice Sotomayor was returned, just days before the Court recessed in June 2019, and denied certiorari with hastiness along with 1601 other cases in the haystack on the first open session of the Court on October 7, 2019.

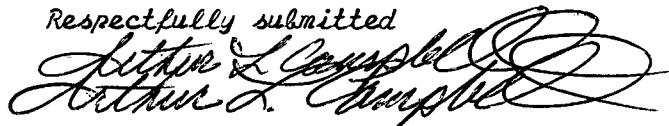
Campbell contends that a COA should have issued; at the very least, "[t]he issues presented are adequate to deserve encouragement to proceed further." Buck v. Davis 137 S.Ct. 759 (2017) (quoting Miller-El v. Cockrell, 573 U.S. 322, 327 (2003)). An accused's right to be given material and exculpatory information in advance of trial is a fundamental due process

right under Brady 373 U.S., at 87. In view of the importance of the right involved and the obvious error here, Campbell urge this Court to grant the petition for writ of certiorari and reverse the denial of a COA.

RELIEF REQUESTED

WHEREFORE, and in light of all the foregoing listed above, Campbell prays that this Honorable Court grant his petition for rehearing using the rational set forth in Brady v. Maryland, for the proposition that new discovery of the property book in 2011 triggered a later start date of the statute of limitation under 28 U.S.C. § 2244(d)(1)(D),

Respectfully submitted



Arthur L. Campbell, #185620  
Gus Harrison Correctional Facility  
2727 E Beecher St,  
Adrian, MI 49221

Dated: October 31, 2019  
November 24, 2019

CERTIFICATE OF SERVICE

I, Arthur L. Campbell, do declare that on October 31, 2019, I served the enclosed PETITION FOR RULE "44" REHEARING ON Respondent's counsel, at P.O. Box 30217, Lansing, MI 48909.

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

Execute on October 31, 2019  
November 24, 2019

1st   
Arthur L. Campbell