

18-9634
NO. _____

Supreme Court, U.S. FILED APR 12 2019 OFFICE OF THE CLERK
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IN THE
SUPREME COURT OF THE UNITED STATES

TERM 2019

Destyn David Frederick
VS.
BRYAN COLLIER, EXCT, DIRECTOR et al.
LORIE DAVIS DIRECTOR OF CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONAL DIVISION
Respondant

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

PETITION FOR WRIT OF CERTIORARI FOR THE
REVIEW OF THE UNITED STATES COURT AND COURT OF APPEAL
FIFTH CIRCUIT

RESPECTFULLY SUBMITTED
x. Destyn D. Frederick
Destyn David Frederick
Connally Unit
899 F.M. 632
Kenedy, Texas 78119

ORIGINAL

ISSUE FOR REVIEW

ISSUE NO ONE AND TWO whether the United States District court and the Fifth Circuit court of appeals have denied Petitioner his rights to challenge the Government conviction for murder and 30 year sentence for murder, when denying Petitioner relief of a first successive application for challenging said conviction of the government, denying a COA Certificate of Appealability for appealing the governments alleged conviction. And or denying Petitioner to challenge any lesser offense of the actual conviction and/or trial of the lesser offense indicted for.

ISSUE NO THREE. Whether the lower habeas courts and the fifth circuit court of appeals have errored in not appointing counsel to represent Private man Destyn David Frederick for challenging the government alleged conviction against him in Legal Fiction name DESTYN DAVID FREDERICK. A Private man who is unrepresented and cannot pursue Pro se for fairly challenging a government conviction against him, unless authorization by the courts or appointment of counsel.

ISSUE NO. FOUR. Whether the lower habeas courts and the Fifth Circuit court of appeals have errored in not reversing his alleged conviction after direct appeal, Ordering a new trial or new sentencing trial on True-bill reversal he was entitled to after direct appeal, whether the State habeas court and the federal habeas court have denied petitioner his rights for relief clearly demonstrated in first successive State and Federal applications. Whether the Fifth Circuit court of appeals has errored in not authorizing a Certificate of appealability COA, and appointing counsel in the cause.

ISSUE NO. FIVE. Whether all the above issues presented clealy demonstrate violation of Petitioners constitutional rights, and Deprivation of challenging the government conviction depriving the Petitioner a private man to the writ of habeas corpus for proceeding pro se in the challenge of the government conviction against him in legal fiction name DESTYN DAVID FREDERICK, while lower habeas courts and court of appeals issue orders denying the private man relief. And imprisoning him in violation of the U.S.Constitution depriving the private man of his Liberty and to challenge the gpovernment conviction by the Writ of Habeas Corpus the main purpose of the writ of habeas corpus And Whether such actions are in violations of the 1st and 8th Amendment of Right to petition the government in redress of grievances and against Cruel and unrunusual punishment.

Constitutional and Statutory Provisions

Federal Statutes

28 U.S.C. 1746

28 U.S.C. 1257(a)

28 U.S.C. 1251

Constitutional Amendments

United States Amendment 5

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United States Amendment 6

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United States Amendment 8th and 1st.

United States Amendment 14

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Texas Constitution

Art. 1 Sec. 10

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Art. 1 Sec. 19

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Texas Penal Code 7.02

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Texas Code Sec. 2.01

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Texas Code of Criminal Procedure

Art 10.05

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Art. 21.03

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Art 30.03

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And the United States Southern District of Texas Laredo Division.

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Respondant

ON PETITION FOR WRIT OF CERTIORARI FOR REVIEW OF

THE UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF SAID COURT :

Comes Now Private Man Destyn David Frederick, the Petitioner legal Fiction name DESTYN DAVID FREDERICK in the above styled numbered cause, Proceeding Pro se and Informa Pauperis. And would present this court with his Petition For Writ of Certiorari Seeking a review of the United States Court of Appeals Fifth Circuit, and Review of the United States District Court Southern District Laredo Division in the Denial to issue a Certificate of Appealability. And for a Conviction obtained by the State in Violations of the United States Constitutions depriving the Private Man and the Petitioner of his Rights to challenge the governments actual conviction by Writ of Habeas Corpus. The purpose of the writ of Habeas Corpus,

OPINION BELOW

The United States Court of Appeals ORDER for the Fifth Circuit denying Petitioner a Certificate of Appealability COA for the governments murder conviction and 30 year sentence appears in Appendix A.

The United States Court of Appeals ORDER Denying Motion for Rehearing and or Reconsideration Appears in Appendix B.

The United States Southern District Motion for Summary Judgment appears in Appendix C.

The United States Southern District Court's Final Judgment Dismissing With Prejudice Denying Certificate of Appealability Appears in Appendix D.

The United States District Court ORDER Granting Respondants Motion For Summary Judgment Dismissing with Prejudice Appears in Appendix E.

The United States Supreme Court letter on filing for a Writ of Certiorari for review of the State Criminal Court of Appeals decision Appears in Appendix F.

JURISDICTION

The United States Court of Appeals Fifth Circuit denied to Issue Petitioner a Certificate of Appealability COA for appealing a Murder conviction and 30 year sentence on January 24, 2019. The Petitioner timely Filed a Motion for rehearing and reconsideration. However, on February 14, 2019 the United States Court of Appeals issued an ORDER and DENIED reconsideration. The Petitioner has 90 days from the date of the last order denying his Motion for Reconsideration for which was on February 14, 2019. And therefore, this Petition for Writ of Certiorari for review of the United States Court of Appeals Fifth Circuit is timely filed Thus Supreme Court's Jurisdiction is Invoked under Title 28 U.S.C. 1251 .

CONSTITUTIONAL AND STATUORY
PROVISIONS INVOLVED

1. 5th Amendment to the United States Constitution.
2. 6th Amendment to the United States Constitution.
3. 8th Amendment to the United States Constitution.
4. 14th Amendment to the United States Constitution.

STATEMENT OF THE CASE

The Private man Destyn David Frederick the Petitioner in this Petition, with given legal fiction name DESTYN DAVID FREDERICK was charged by a Wildly charged indictment of La Salle County Grandjury on September 1, 2011 in a four count indictment alleging; (1) Capital Murder of Isreal Cases in the course of a Burglary in Count one. Count (2) causing serious bodily injury to Guadalupe Cases an Elderly person by shooting with a firearm in Count two. Count (3) alleged that in the commission of Aggravated Robbery with a Deadly Weapon of Raquel Villennueva Count Three. And Count (4) Operating a Motor Vehicle without the consent of Jeremy Peters the Owner Count Four. All Offenses charged with were alleged to have occurred on or about the 13th day of June 2011. The State waived the Death Penalty, (CR;103) before jury selection. And the State elected to proceed to trial on the offense of Capital Murder as alleged in Count one (RR; 11;2-4).

Private Man Destyn David frederick was one of three defendants that was charged with the Capital Murder. A Co-defendant Rigo Guerra who was the Shooter in which killed Isreal Cases was also charged with Capital Murder of Isreal Cases. However, before his Jury trial for Capital Murder where the Prosecutor was infact going to pursue the death Penalty. The Prosecutor was able to get Rigo Guerra to plea bargain for a Capital Life sentence without parole. And the other defendant also charged in the Capital Murder was Mr. Marcus Serna who was already on a deferred adjudicated probation for aggravated robbery and aggravated assault in a completely different offense.

The State had got Co-defendant Rigo Guerra to plead guilty in a plea bargain for a life sentence without parole to avoid a death penalty in the same case number. Petitioner would go to trial by jury on a Not guilty plea. So therefore for this reason the State waived the death penalty because Rigo Guerra had signed a life sentence without parole for the Murder of Isreal Cases. And is why the State pursued with count one Capital Murder in the jury trial of Destyn David Frederick. Whereas Count one alleged Capital Murder of Isreal Cases in the course of a Simple Burglary, and for which is the only offense Petitioner Destyn David Frederick could have been indicted, or convicted in.

And Co-defendant Marcus Serna had further agreed to a plead bargain sentence for a lesser offense of murder, and for a (40) year plea bargain sentence, and for inreturn for a (40) year sentence he would testify for the State in the Capital Murder trial of Petitioner Destyn David Frederick. After the jury trial for Petitioner for Capital Murder, the actual arraignment and indicting proceeding. The jury alleged to have returned a guilty verdict for a lesser offense of murder and Petitioner Destyn David Frederick was sentenced by this same jury to a 30 year sentence for murder.

On March 12, 2014 Petitioner through his defense counsel representing legal fiction name DESTYN DAVID FREDERICK as shown in the records Counsel timely filed a motion for new trial on behalf of Private man Destyn David Frederick. For which said motion contained an "allegation of jury misconduct" upon the hearing of testimony from jurors a Sanchez and Barrow, the court denied Petitioner's motion for new trial. (CR: 691; RR; XI 5-35-45).

And then in accordance to the juror's verdict and the Court's ruling on Petitioner's motion for new trial the court entered Judgment of conviction and sentence for any offense the jury may have returned a True-bill of Indictment for if any against Petitioner Whereas Petitioner's destyn David Fredericks 30 year sentence for murder was infact Null and Void, and whereas co-defendant Marcus Serna would be signing a plead bargain sentence of (40) years the lesser offense of murder. And waiving his appeals as well as Co-defendant rigo Guerra on the signing of a Capital Life sentence without parole.

STATEMENT OF THE FACTS

The Petitioner Destyn David Frederick a Private man who was charged by the government in legal fiction name DESTYN DAVID FREDERICK, NOT UNDERSTANDING legal proceedings or learned in Law, was tricked into pleading to the governments legal fiction name charging a DESTYN DAVID FREDERICK NOT THE PRIVATE MAN Destyn David Frederick. He was given a attorney to represent him in the legal fiction name DESTYN DAVID FREDERICK. The Petitioner who was pleading NOT guilty to the governments charging instrument/Indictment was taken to a Capital Murder trial. The actual arraignment of all three accused. However, the fact was that the government alleged Petitioner Destyn David Frederick would go to trial for Capital Murder as in count one for which charged Capital Murder of Isreal Cases and in the course of "Burglary." The fact was Petitioner Destyn David Frederick would be used as the governments escape goat. He would be taken to the Capital Murder trial where the government would waive a death penalty, and only because the government had got co-defendant Rigo Guerra to sign a Capital Life sentence without parole, getting there conviction for a Capital Murder on Rigo Guerra as alleged in count one. And the government could further get a Indictment against Petitioner Destyn David Frederick for the LESSER COUNT IN COUNT ONE Burglary And there by acquitting him of the Capital Murder count one, for which further alleged a Burglary And is a lesser offense. And the fact is that the government would get a second co-defendant Marcus Serna to plead guilty who was further charge in the Capital Murder for a lesser offense he would be pleading guilty to murder and signing a 40 year sentence, which would be the lesser offense of Capital Murder and thereby getting the governments conviction against co-defendant Marcus Serna for the lesser offense of Murder.

This was the fact on why there was an issue with the jury in the sentencing phase of Destyn David Frederick or a lesser offense for the fact a 30 year sentence for petitioner for the lesser offense in for which Destyn David Frederick the Petitioner could have been indicted or convicted of in lesser count in count one was a simple burglary And this would be the fact on the bases of defense counsel timely filing a Motion for New trial which said motion contained an allegation of jury misconduct upon the hearing of testimony from juror's the court denied Petitioners motion for new trial Whereas Petitioner conviction if any is nothing more than a simple burglary.

The fact is that after the jury returned a guilty verdict for a lesser offense for Petitioners who was the one in trial on count one Capital Murder in the course of committing a burglary, for which was the lesser offense in count one the State proceeded to trial in, with Petitioner Destyn David Frederick the trial court goes into a sentencing phase stage with this same jury for sentencing Petitioner Destyn David Frederick to a lesser offense of Capital Murder, for which was also alleged to be murder. The jury imposed a 30 year sentence on petitioner Destyn David Frederick. A sentence that was in excess of what he could have gotten for a lesser offense on burglary. However, the fact that this was just the actual arraignment of all three defendants. And the government would be using the Petitioner as their escape goat because he was the only one who would be pleading Not guilty and going to trial. because in this actual arraignment for which is a federal proceeding and a proceeding in for which indictments are handed down to the State if the State has proven a case against the accused. And the fact was that after getting Rigo Guerra to sign for a Capital Life sentence without parole, the government would in fact be able to get a Capital indictment conviction for Rigo Guerra. And this was fact on why the government proceeded with count one Capital murder. And in for which count one had a lesser offense or Burglary in for which a Indictment conviction could be handed down for Petitioner Destyn David Frederick the man on trial in count one.

And further the fact was that a lesser account of Capital Murder is Murder, in for which the State would use a second defendant Marcus Serna to testify for the State against Guerra Rigo. And Petitioner Destyn David Frederick where in exchange for his testimony he would testify before the jury that he would be signing a 40 year sentence for a lesser offense of murder for his cooperation on with the government. So therefore this was fact on why the government had Marcus Serna Testify before the jury that he would be signing a 40 year sentence for getting the jury to return a indictment for the lesser offense of murder for Serna. And the fact that this was just the actual arraignment of all three defendants where Rigo Guerra, and Marcus Serna would be waiving trial by jury and pleading guilty for prison sentences. The jury was able to return a Capital Indictment and a indictment for a lesser offense of murder for Marcus Serna. And a indictment for Petitioner Destyn David Frederick for a single Burglary. However the fact that this was just a actual arraignment a federal stage proceeding, Sentencing phase trial was to premature to be imposed on Petitioner Destyn David

Frederick for a simple Burglary. And the fact he had been in jail pending trial for a substantial amount of time, and could have only been sentenced to a maximum state jail felony for a simple Burglary. And the fact that any sentencing phase was to premature to be imposed on Petitioner Destyn David Frederick for a Burglary. The government holds a sentencing phase by this same jury for rendering a 30 year sentence for a lesser offense of murder. The fact was and the strategy of the government was that this jury who imposed a sentence on Petitioner Destyn David Frederick would intentionally render a sentence in excess of a lesser offense of burglary for the Petitioner.

And because the fact was the jury sentence would be Null and Void, and in excess of a burglary offense. And further the fact was it was alleged to be for a lesser offense of murder, where a Marcus Serna had testified before the jury that he would be signing a prison sentence for a lesser offense of murder for his cooperation with the government.

So therefore, the government strategy was to have the jury render a 30 year sentence for a lesser offense of murder whereas this was a excessive sentence then for what Petitioner Destyn David Frederick could receive for a simple burglary, and Marcus Serna would be signing a 40 year sentence for a lesser offense of murder for the government. And the trial court could infact excuse the jury after arraignment rendering the excessive 30 year null and void judgment and sentence to premature to impose for a simple burglary on Petitioner Destyn David Frederick.

The Petitioner was given a direct appeal attorney who filed a direct appeal of a Capital Murder trial in count one for which also alleged burglary the lesser offense. The court of appeals affirmed a lesser offense of murder in its opinion and 30 year sentence. This direct appeal would have actually been for Rigo Guerra and co-defendant Marcus Serna affirming two convictions based on guilty pleas. And not for Petitioner Destyn David Frederick who if indicted and convicted for is nothing more than a burglary. The Petitioner Destyn David Frederick has filed a first successive 11.07 State Habeas Corpus demonstrating a entitlement to relief, of the governments alleged lesser offense of murder and 30 year sentence in which holds Petitioner in TDCJ, in violation of the U.S. Constitutions. However, the Texas court of Criminal appeals has denied relief without a Written Order.

The Petitioner had filed a Writ of Certiorari in the United States Supreme Court after his PDR to the Texas Court of Criminal Appeals was denied. This Court filed his Writ of Certiorari on July 11, 2016 as No. 16-5139. In the request of review of the highest court.

Then on October 3, 2016 this Supreme Court issued a Order in the entitled case and denied Petitioner a Writ of Certiorari for review of the States Highest Court.

This was when he then filed his "first Successive State Habeas Corpus" after the denial of this court, nowever, the Texas Court of Criminal Appeals just went on to dismiss without a written order his state application for writ of Habeas Corpus denying Petitioner relief on a State application demonstrating an entitlement to relief.

The Petitioner then filed his 2254 Federal Application, a first Successive application demonstrating a entitlement to relief. The United States District Court Laredo Division filed a motion for summary judgment See. Appendix C. The United States District Court granted Respondants Motion for Summary Judgment in a final order see Appendix D.

The Petitioner filed notice of appeal in the district court and to the fifth circuit in request for a certificate of appealability COA and authorization to file his successive application 2254 federal Writ of Habeas Corpus. The court of appeals fifth circuit filed a order Januray 24, 2019 denying a COA. See Appendix A.

Petitioner filed a motion in the fifth circuit for rehearing and or reconsideration and on February 14, 2019 the court issued an order denied petitioners motion for rehearing and reconsideration.

The Petitioner would further show this court that this court held a hearing in this court in concern of his writ of Certiorari for review of the States highest court. However, then just simply issued private man Petitioner a denied order issued by this court No 16-5139.

Petitioner would further show this court that prior to the fifth circuit denying COA there was on order showing a reversal Petitioner the private man Destyn David Frederick did not receive. The fifth Circuit then just went on to issue Private man Destyn David Frederick an order denying a COA.

REASONS FOR GRANTING THE WRIT

ISSUE ONE: Whether the United States District Court and the court of appeals has errored when denying the Petitioner to pursue with a Certificate of Appealability COA for appealing and pursuing the Government alleged conviction and sentence of 30 years the conviction and sentence for which hold the Petitioner confined in violations of the U.S. Constitutions.

ISSUE TWO: Whether the Federal Habeas Court and the Court of Appeals Fifth Circuit, have errored in denying Petitioner relief on a First Successive Application and not authorizing Petitioners to Pursue with a First Successive Application demonstrating an entitlement to relief, thereby denying Petitioner of the Writ of Habeas Corpus for challenging a governments conviction.

ISSUE THREE: Whether the Lower courts have errored in not appointing counsel to represent Private man Destyn David Frederick, for challenging the Governments conviction against him in legal fiction name DESTYN DAVID FREDERICK, Private man who is unrepresented, and cannot pursue Pro se for fairly chnallnging a governments conviction against him, unless authorized by the courts.

ISSUE FOUR: Whether the Federal Habeas Court and the Fifth Circuit court of appeals have errored in not reversing private mans Destyn David Fredericks illegal conviction and 30 year sentence, ordering a New trial or New sentencing trial. When court docket sheets clearly show such events have occurred, however, Private man Destyn David Frederick is served with order denying such relief requested in the courts.

ISSUE FIVE: Whether all the above issues presented above clearly demonstrate violations of Petitioners Constitutional Rights, and Deprivation of challenging the governments conviction, depriving the Petitioner a private man of the writ of habeas corpus for proceeding pro se in the challenge of the governments conviction against him in the legal fiction name, in for which counsel is provided to represent in court proceeding in legal fiction name DESTYN DAVID FREDERICK, while lower Habeas Courts and Court of Appeals issues orders denying the Private man relief. And Imprisoning him in violations of the U.S. Constitution depriving the Private man of his Liberty and to challenge the governments conviction by writ of Habeas Corpus the main purpose of the writ of nabeas corpus.

ARGUMENT WITH AUTHORITIES

The Private man Destyn David Frederick would argue to this Court that his U.S. Constitutional rights have been violated by the State Habeas Courts And the Federal Habeas Courts, from the very beginning of the alleged trial of a Capital Murder. The government wildly charged private man Destyn David Frederick in a legal fiction name DESTYN DAVID FREDERICK, as an Entity name, And read the charge of the government in legal fiction name DESTYN DAVID FREDERICK to the private man Destyn David Frederick. And tricked Petitioner to plead to the governments charge identifying himself as the legal fiction name of the governments. The government then appoints the legal fiction name A Attorney, who then represents the legal fiction name DESTYN DAVID FREDERICK.

In this case the government charged thee individuals in three separate legal fiction names RIGO GUERRA, MARCUS SERNA AND DESTYN DAVID FREDERICK the Petitioner. And all three with the Capital Murder of Isreal Cases. The government got Rigo Guerra a private man to plead guilty to the legal fiction name RIGO GUERRA, for a Capital life sentence without parole. The government then gets Private man Marcus Serna to testify before the jury in the trial of Petitioner that he would be signing a Forty year sentence for the government in which charged him with Capital Murder in the government legal fiction name MARCUS SERNA for which based on his testimony before the jury the government was able to get a jury to return a indictment for a lesser offense of murder. And Petitioner would argue to this court that this was how the trial court was able to go into a sentencing phase for having the jury render a guilty Verdict and sentence for a 30 year sentence that was read on petitioner Destyn David Frederick . And for which was Null and Void and in excess of any Burglary the Petitioner could have been indicted for or convicted for.

The Petitioner would argue that after the government got Rigo Guerra to sign for a Capital Life sentence without parole. And in order for the government to hold this conviction on Rigo. The government had to bring Petitioner Destyn David Frederick to trial for Capital Murder, and Pursue with count one for which alleged capital murder in the course of committing a burglary the lesser offense for Petitioner. Whereas the government would further use Marcus Serna to actually testify before the jury that he would be pleading guilty and signing a 40 year sentence for the government for a lesser offense of Murder. Allowing him to testify before the jury as if he was the man on trial who would be signing a 40 year sentence for the government for the lesser offense of murder The petitioner would argue that this was how the

government was able to get a jury to return a guilty verdict for a lesser offense of Murder. And then go into a sentencing phase trial with this jury as if to be the sentencing trial for Destyn David Frederick, and for the jury to render a 30 year sentence that would be read on Petitioner Destyn David Frederick, whereas Marcus Serna had testified before the jury that he would be signing a 40 year sentence. And for this fact the jury's sentence was 30 years in excess of a lesser offense of Burglary that Petitioner could have gotten. However, the fact that this 30 year sentence rendered by this jury against Petitioner Destyn David Frederick was Null and Void, and any sentence for lesser offense of Burglary would have been premature to be read on Petitioner Destyn David Frederick. So the Government reads a Null and Void 30 year sentence against Destyn David Frederick and sends him to the Director of TDCJ to be held upon an illegal 30 year sentence in violation of the U.S. Constitution. The government used Petitioner Destyn David Frederick as the escape goat for getting three birds with one stone.

The State Habeas Court and the Federal Habeas Courts have denied the Petitioner from challenging the government's alleged conviction of Murder against him. And the fact is because he is not convicted of Murder, or even the Capital Murder he was taken to trial for in count one. The Petitioner Destyn David Frederick was acquitted of Capital murder and the lesser offense of murder. And the fact is reversing the conviction of Capital Murder would be the reversal of Rigo Guerra who pleaded guilty for a Capital Life sentence. And the affirming the lesser offense of murder would be for a Marcus Serna who pleaded guilty for the lesser offense of murder. And Petitioner would argue that this was the basis on for which the court of appeals affirmed a lesser offense of murder conviction on Marcus Serna. And for these facts Petitioner Destyn David Frederick can not or has not had a fair opportunity to even challenge any government conviction against him. And is being deprived of the writ of Habeas Corpus for which is the means of challenging a government's conviction. The lower habeas court and the Federal habeas court are depriving Petitioner from challenging the government's alleged conviction of murder and 30 year sentence in for which illegally holds Petitioner Destyn David Frederick in prison. Petitioner's plea to the government's legal fiction name DESTYN DAVID FREDERICK was not guilty, however, by pleading to the name, the private man Destyn David Frederick put himself as the one being called upon under the government's legal fiction name. In for which the courts have put counsel to represent the legal fiction name. The Private man Destyn David Frederick is unrepresented.

And is proceeding Pro se in this court, and has also been Pro se in the lower state and federal habeas courts, whereas at no time has counsel been appointed to the Private man Destyn David Frederick. Other then on the actual arraignment a Federal stage proceeding in legal fiction name DESTYN DAVID FREDERICK. And State direct appeal affirmed.

The Petitioner filed a first successive State Habeas Corpus clearly demonstrating actual innocence of the Capital Murder on trial for in count one. Demonstrating a entitlement to a reversal and remand after direct appeal for a capital case. Clearly demonstrating this was a actual arraignment federal proceeding on all three defendants. However, the fact he was the only defendant pleading not guilty the government used him as the escape goat. And putting a direct appeal attorney to represent a legal fiction name of any one of the three, A Rigo Guerra, A Marcus Serna, or even Petitioner Destyn David Frederick as alleged in the Direct Capital Appeal filed, where the court of appeals affirms a lesser offense of murder for Marcus Serna. And a lesser offense of Burglary on Petitioner Destyn Frederick, for which the same jury in this actual arraignment sentence Petitioner to a 30 year sentence for an alleged lesser offense of murder. Petitioner clearly demonstrated that he was actually innocent in a first state habeas corpus court,. And that he has not been legally tried and convicted as required under the U.S. Constitution on a true-bill of indictment returned by a Grandjury. The State habeas court denied relief, and Petitioner to challenge the governments alleged conviction of murder and 30 year sentence. By writ of habeas corpus, whereas the court of appeals affirmed a alleged lesser offense of murder and 30 year sentence in the appeal of legal fiction name DESTYN DAVID FREDERICK for holding private man Destyn David Frederick in prison for a 30 year prison sentence of conviction for murder in violation of his rights.

The Petitioner would further argue that the fact this was a first successive state habeas corpus, and Petitioner Destyn David Frederick is not the one actually convicted for the lesser offense of murder. He received no relief from the Texas Court of Criminal Appeals. Whom has basically denied Petitioner to challenge the conviction that holds him in violation of his rights.

The Petitioner filed his 2254 Federal application presenting a actual innocence claim, and for authorization to file a successive 2254 application. The United States Southern District of Laredo division denied relief of his 2254 and denied a COA stating the appeal would not be taken in good faith. The Fifth Circuit court denied Petitioners motion for certificate of appealability COA, further denying the petitioner to challenge the governments conviction by the writ of habeas corpus to petitioner the private man unrepresentative, and pursuing Pro se.

The Petitioner would show that the Fifth Circuit court of appeals has in fact errored in not granting Petitioner a C.O.A. and or appointing counsel to private man Destyn David frederick for proceeding for legal fiction name DESTYN DAVID FREDERICK. Petitioners Rights have clearly been violated by the State and Federal habeas courts. And that the Texas Court of Criminal Appeals refusal of his pro se PDR is plain error, whereas in the habeas applications filed pro se by Petitioner his first applications were entitled to relief, if nothing more a new sentencing trial for the true-bill indicted for, and or convicted for, in the actual arraignment a federal stage proceeding. The Petitioner would show this court that a co-defendant whom was not on trial. A Marcus Serna who testified before the jury in Petitioners trial as a State witness was an accomplice witness as a matter of fact because he to had been wildly indicted by the prosecutor in the same offense Petitioner was in trial for Capital Mrder. And there was a favorable guilty plea in return for his testimony against Petitioner and Rigo Guerra. See **BROWN V. STATE** 270 S.W3d. 564 (Tex. Crim. App. 2008) In Brown V. State Glaspie who participated in the crime and who was subsequently convicted of aggravated robbery in accordance with a plea agreement for his participation is an accomplice as a matter of law.

The United States court of appeals fifth circuit has clearly errored in denying Petitioner Destyn David Frederick a Certificate of Appealability COA. Whereas it was the Petitioner Destyn David frederick who was on trial for Capital Murder on a Not guilty plead before the actual arraignment a federal stage proceeding where indictments are actually handed down to the State only if the government can prove its case then true-bills are handed down. If not then one is no-billed and not bound over for trial. Co-defendant Marcus Serna who was not on trial, and would be waiving his actual arraignment had

testified before the jury in Petitioners actual arraignment on a not guilty plead. That he would be accepting a 40 year plead agreement for his participation in testifying before the jury as State witness against Rigo Guerra and the Petitioner Destyn David Frederick.

The Petitioner would show that at a second hearing also outside the presence of the jury. It was co-defendant whom was not on trial and a witness for the State. He admitted he had been transferred to the Cotulla Courthouse from Dimmit County, and that he was found in possession of Marijuana and a cell phone by Deputies. Serna would not admit how he obtained the Marijuana and was vague as to the time and day he had last smoked marijuana while in custody. Co-defendant Serna who was not on trial and testifying before a actual grandjury in Petitioner trial admitted before the jury thatr his urine would test positive for Marijuana (RR 8;36-45,47). This Testimony from co-defendant not on trial and before the jury in Petitioners trial harmed Petitioner, and was used by the State to show that this witness was guilty of a crime, for having the jury return a indictment, guilty verdict of a lesser offense for Petitioner whom was the one on trial and a first time defendant. Further Petitioner would argue that the fact was that prior to this trial of Petitioner for a capital murder count one the government proceeded with read Capital Murder in the course of committing a Burglary. The State's witness a Serna whom was a co-conspirator to the Capital Murder, in a ealier plea bargain trial for a unrelated offense had been convicted of a Burglary of a Habitation and was serving ten years shock Probation, wherein he served 180 days in prison before being placed on Probation. And at the time he testified co-defendant Serna was also pending a charge distrbution of Marijuana in Dimmit County. And he had acknowledged before the jury that he had smoked marijuana while in custody a few days before his trial testimony against Petitioner. (RR 8. 85). This witness was further testifying before the jury that for his co-operation in this Capital Murder trial of Petitoner Destyn David Frederick that he had further been charged in. That he would get a plea bargain sentence from the State for 40 years.

This witness of the State was used to testify before the jury because he would testify to his own guilt to unrelaterd offense than the Capital Murder, And his own guilt in the Capital Murder Petitoner is in ttrial for as he would be testifying that for his cooperation he would be getting a 40 year

plea bargain sentence. And for having a jury return a indictment for murder under the law of parties for a lesser offense. And at the same time have this jury find that this witness was further guilty of possession of marijuana while in custody. And therefore, he is also guilty of violating a ten year shock probation he was on and testified before the jury to. And this would have authorized the trial court to impose a sentence of even a 30 year sentence with or without the jury against Serna or Even Petitioner, Whereas Serna would further be signing a 40 year sentence he testified to before the jury.

This co-defendant, a witness for the State whom was not on trial testified before the jury admitting to several crimes, hearings that were further held outside the presence of the jury. He was a convicted felon who had been placed on ten years probation for a unrelated offense to the capital; trial of Petitioner. A felon the prosecutor made a deal with for his testimony to convict the Petitioner, and Guerra. Guerra plead guilty for a Capital Life sentence. And therefore, the government had three prime actors of capital murder. And there was no need to try Petitioner for Capital Murder, other then to hold Guerra's conviction of capital life. However, the fact was to try Petitioner for the capital murder the one whom was not waiving actual arraignment and pleading not guilty. Whereas in this arraignment the government could infact get a indictment for now under the law of parties for murder for holding the forty year sentence Serna would be testifying before the jury to his guilt and he was infact a party to the murder. And for in a sentencing phase trial this same jury could read a guilty verdict under the law of parties for murder against Petitioner Destyn David frederick. For a 30 year sentence for which was Null and Void and could infact be tossed out because Serna would be signing a 40 year sentence he testified to before the jury.

Petitioner was a first time offender who had no criminal record, and was pleading Not guilty to the charged offense of Capital Murder he was taken to trial for in count one, Whereas count one read Capital Murder in the course of committing a Burglary. And he can demonstrate he was acquitted of the Capital Murder. And could have only been convicted of Burglary as Stated in count one the State proceeded on.

The Petitioner was used as a escape goat for the government. He should have never been taken to trial for Capital Murder, being a first time offender. And the State already had Guerra sign for a Capital Life sentence. And Serna would be signing a 40 year sentence for murder under the law of parties in

the same case Petitioner is on trial for. However, trying the case as a Capital murder and charging under the law of parties. The government could get automatic life sentences on Guerra after waiving the death penalty. And a indictment under the law of parties after getting the primary actor Guerra the government could then charge under the law of parties. Therefore, there was no reason to take Petitioner to trial under a capital murder count.

The Petitioner would show that the United States Court, And the United States Court of Appeals Fifth Circuit has denied Petitioner his rights to challenge the governments conviction by writ of Habeas Corpus. And have denied Petitioner to pursue with a COA Certificate of Appealability to challenge the governments alleged conviction against Petitioner that holds him under a 30 year conviction for an alleged murder. However, the fact that Petitioner nahas filed a first State and Federal Habeas Corpus, successive application demonstrating a entitlement to relief. However, such relief would not result in the governments favor. The Petitioner is being denied to challenge the alleged conviction of the government murder and 30 year ~~ssentence~~ sentence, and therefore, the court have just ruled that the appeal woul dnot be taken in good fiath. The fact is the government would lose Guerra's capital life sentence, and Serna's 40 year murder conviciton in which the State has recently affirmed and imposed opinions in cause number Petitioner is appealing. And Petitioner Destyn David Frederick conviction if any indictment was even returned could have only been for a lesser offense of burglary not capital murder or lesser offense of murder as alleged to be tried in, and convicted for lesser offense of murder.

The accused is entitled to notice of the offense with which he is charged and will be tried for. And the notice comes only from the indictment, not from the court's charge, whether the actual charge or a hypothetically correct jury charge. The Petitioner was brought to trial on a wildy charged indictment Not the correct charge that could have been returned by the jury in this actual arraignment a federal stage proceeding for indictments.

The Tex. Code Crim. Proc. 21.03 Provides that everything should be provided. The Fifth Amendment States in part: No Person Shall be held to answer for a Capital or otherwise infamous crime. Unless on a presentment or indictment of a Grandjury. The Sixth Amendment States in part in all criminal prosecutions the accused Shall enjoy the right to be informed of the nature and cause

of the accusation, Art. 1, Sec. 10 of the Texas Constitution provides in part. In all criminal prosecutions the accused shall have the right to demand the nature and cause of accusations against him and to have a copy thereof. UNITED STATES V. YOUNG 730 F.2d. 221 (5th Cir. 1984). Citing Semial U.S. Court case STIRONE V. UNITED STATES 361 U.S. 212 (1960). See also DANIEL V. STATE 754 S.W.2d. 214, 233 (Tex. Crim. app. 1998). Wherein the court held that there can be no question that the error in the charge was so egregious and created such harm that he had not had a fair and impartial trial. For this reason alone the court of appeals should have reversed and remanded for a new trial or sentencing trial on the True-bill that may have been handed down.

The State failed to provide this Petitioner with Notice of which charge indictment he was on trial for. Whereas the pending indictment for which all three defendants had been wildly charged and arrested was for a Capital Murder offense. And this was the charged indictment that was alleged that Petitioner was in jury trial for. For which would have lead to a automatic Life sentence when tried under the law of parties. And as Petitioner can clearly show and demonstrate that the fact he was tried for a Capital offense the only two sentences he could have received was a capital Death sentence, or the automatic life sentence without parole, which is imposed by a jury, when the State is pursuing a Capital death sentence. Therefore, Petitioner can show that because the State did not pursue a death sentence, in this case was for the fact Guerra had agreed to sign for a Capital life sentence without parole. And this was the fact why No Capital Life sentence punishment was read in Petitioners case after a jury alleged to have found him guilty of the lesser offense of murder. And the lesser included of was based on Serna's admission in the Capital offense and testimony before the jury on Petitioner, and Guerra.

The Petitioner can show that in this case the government has acted with outrageous Misconduct, in it's failed attempt to conceal the violations of one's substantial right for obtaining its convictions for Maliciously convicting all defendants charged in this Capital indictment of the prosecutors wildly charging crimes. For this reason Petitioner petitions this court for a Writ of Certiorari to review the federal courts denial of COA and the States Courts and to show how all three convictions are intertwined to deprive the

Petitioner of a fair trial, appeal and fair sentencing trial. And why court hold petitioner appeal is not taken in good faith.

Denying Petitioner of his rights under the U.S. Constitution. This Petitioner was not given notice of which acts he is convicted of or for which acts an indictment/True-bill was naded down for. In this actual arraignment trial, that he would be pending indictment jury trial under. And for fairly challenging the States conviction against him if any.

The foregoing is also violation of Art. 1, Sec. 10 of the Texas Constitution which requires that an accused be charged with an indictment. Art. 1 Sec. 19 which provides Due Process of law to he accused Tex. Code Crim. Proc. Art. 21.03, which requires that everything should be stated in an indictment which is necessary to be proved. In WINSHIP, held that the Due Process Clause Protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. This rule of law has been affirmed and followed in APPRENDI V. UNITED STATES See DANIELS V. STATE 754 S.W.2d. 241 (Tex. Crim. App. 1988)..

In the Petitioners case he was alleged to be in trial for and convicted for the applicable unconstitutional Statute is located at Tex. Penal Code Sec. 7.02. Under its theories of party liability the essential elements of the offense alleged in the indictment, would be modified from that which the grandjury alleged in each indictment. As such the State burden of proof would be "DILUTED" in that it would no longer have to prove that each defendant committed the offense himself, or had the intent necessary under the Statute resulting in elements that are greatly different. Petitioner Attorney intentionally failed to file a motion to exclude party liability from the Trial and an objection to the courts charge to the jury. The State was allowed to modify essential elements of the indictment through the presentation of evidence as to party liability and through the Court's charge which contained issues and instructions as to party liability.

The State strict proof, burden of beyond a reasonable doubt, was Diluted in that it no longer had to prove the Petitioner committed the offense on trial for himself or had the intent necessary for a conviction of Capital Murder, or even Murder. The elements in the Court's charge greatly different than what was charged in the indictment. Petitioner did not receive adequate Notice of the offense charged. The Petitioner's rights under FIFTH SIXTH AND FORTEENTH AMENDMENTS to the United States Constitutions were violated because party liability was not alleged in the indictment, even though said theories were included in the courts charge.

Additionally the States actions of constructive amendment violated the mandates of indictment under Tex. Code Crim. Proc. Art. 1005 and 21.03 Respectfully this Petitioner would request that this court order the lower State court to follow the Supreme law of the Land. FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS to United States Constitutions and precedence's interpretation of the same. As such a reversal of the judgment of the State trial court is warranted.

It is fundamentally well settled that one cannot be convicted of a crime unless it is shown beyond a reasonable doubt that the defendant committed each element of the alleged offense. See the FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION TEX. CRIM. PROC. ART. 30.03, Tex. Code Sec. 2.01. In this case the Petitioner was not given of for which offense he was actually in jury trial for, and before this federal grandjury actual arraignment on his plead of not guilty to a four count charge of the prosecutor.

The State must show more than mere presence to establish participation in a criminal offense. Mere presence or even knowledge of an offense do not make one a party to the offense. VALDEZ V. STATE 623 S.W.2d. 317, 321 (Tex. crim. app. 1981). OAK V. STATE S.W.2d. 174, 177 (Tex. Crim.app. 1982).

CONCLUSION

The Petitioner would show this court that he filed a first successive State Application challenging the alleged murder conviction in said trial court cause number of the conviction. And courts have ruled that first successive applications are entitled to relief. Whereas in Petitioners first application he clearly demonstrates an entitlement to relief. However, the fact of the matter is Petitioner Destyn David Frederick is not convicted of the government alleged conviction of murder in said cause number. When indictments are handed down by the grandjury in actual arraignments it is at this point in which it is assigned a cause number and to a trial court. So therefore, Petitioner can clearly show that said cause number he is alleged to be convicted of in a lesser offense of murder he is being misled with by the government. And is fact on why the government denys to grant relief of his first application demonstrating an entitlement to relief. Further this court held hearings in Petitioners first Writ of Certiorari requesting review of the States highest court and then denied the Writ of Certiorari. Petitioner filed a first Successive 2254 Federal Application in which he challenged the same murder conviction clearly demonstrating he is not convicted of said cause number for the offense of murder and 30 year sentence is in excess of a Burglary the only offense he could have been convicted of and or an indictment returned for.

Further Petitioner would show that the federal habeas court and the fifth circuit court of appeals. Deny to issue a COA, whereas such COA authorizing a successive 2254 Federal Petition would not be in favor of the government whereas it would require reversing a capital murder conviction and a lesser offense of murder for co-defendants Guerra and Codefendant Serna who pleaded guilty and accepted prison sentences in said cause number Petitioner is attempting to challenge. And for which the government alleges is his conviction cause number for a lesser offense of murder and 30 year sentence.

This Petitioner has filed a Direct appeal where he challenged the alleged murder conviction, because it is Petitioner Destyn David Frederick whom was alleged to have been convicted by the jury and was the one on a not guilty plea and he was required a reversal after direct appeal. However, the fact that it is not Petitioner who was convicted for CAPITAL MURDER or LESSER offense of Murder in said cause number he challenges. The court of appeals

has affirmed convictions in said cause numbers for Guerra and Serna based on there guilty pleads and acceptance of prison sentences. However, the State and federal go on into a sentencing phase trial with the same jury for the reading of a alleged lesser offense for murder and 30 year sentence for closing out the actual arraignment a federal stage proceeding where indictments are handed down. And as if this sentence and conviction is for Petitioner Destyn David Frederick a private man who can not legally be convicted and charged with a crime. And therefore, Petitioner can infact show that he is infact Innocent and has not been legally convicted as of to the indictment for which could have been returned in this actual arraignment against Petitioner in Legal Fiction name DESTYN DAVID FREDERICK in for which Petitioner Destyn David Frederick was tricked into answering for the Legal Fiction name DESTYN DAVID FREDERICK. In for which counsel was appointed to represt the Legal fiction name Not Private man.David Frederick and is unrepresented and is proceeding pro se demonstrating to this court that he is actually innocent. of the governments alleged conviction against him. And ~~said~~ said conviction has been abtained in violation of his U.S. CONstitutional rights as a U.S. Citizen of the United States. And he is infact being deprived to challenge the governments indictment/conviction/sealed federal indictment returned in the actual arraignment a federal stage proceeding, where indictments are handed down to the State when True-bills are handed down, and where it then gets a cause number, and is assigned to a trial court for trial at a later time and stage. On a True-bill of Indictment returned. Petitioners constitutional rights have clearly been violated and he has infact been deprived of a fair trial and sentencing trial, whereas such true-bill has yet to been read against the accused. And therefore, he is actually innocent and a Writ of Certiorari should infact issue.

OATH

I Destyn David Frederick do declare under the penalty of perjury that the above and foregoing contents Stated in this Writ of Certiorari are true and correct to the best of my knowledge pursuant to V.A.C.C.P. Art 14 and Texas Practice and remedies Code 132.001 thur 132.003

Executed on this Date Apr. 15, 2019

CERTIFICATE OF SERVICE

I Destyn David Frederick, the Petitioner do certify that a true and correct copy of his Writ of Certiorari has been served on Respondant by U S Mail, Postage pre paid by forwarding said copy to the Ken Paxton, at Attorney General, P.O. Box 12548, Capital Station, Austin Texas 78711-2548 on this Date April 15, 2019

Respectfully Submitted

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