

Case No. 19-5007

In The
SUPREME COURT OF THE UNITED STATES

JONATHAN PAUL SIKES,

Petitioner

Vs.

LORIE DAVIS, Director, TDCJ-CID,

Respondent

On Rehearing Of This Honorable Court's Denial
Of Petitioner's Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR THE REHEARING OF THIS HONORABLE COURT'S ORDER
DENYING PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

JONATHAN PAUL SIKES
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2661 FM 2054
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PRO SE LITIGANT
CERTIFIED PARALEGAL BY OHIO UNIV.

ISSUES PRESENTED TO GRANT THE REHEARING

The Petitioner prays this Honorable Court will exercise Its great power of supervision and GRANT THE REHEARING of Petitioner's Writ of Certiorari for any of the following intervening circumstances:

1. This Honorable Court should clarify the two-fold meaning set out in Masucci v. U.S. [136 S.Ct. at 715] because the lower courts will take a hold of the controlling effect of egregiously denying sufficiency claims, even when it can be said that the prosecution did not produce sufficient evidence for the jury to consider beyond a reasonable doubt. See Pages 4, 6.
2. Whether Petitioner was a legal adult is an essential element that the Prosecution had to prove beyond a reasonable doubt. Accordingly, had the lower courts properly applied Jackson's standard, they should have held that, in the light most favorable to the prosecution, no rational trier of fact could have found that the Petitioner acted as a legal adult, which is an essential element, beyond a reasonable doubt. Therefore, this Honorable Court should grant the rehearing because the Prosecution axiomly failed to produce the necessary and sufficient evidence, that Petitioner was a legal adult, to justify the Jury's finding of guilt beyond a reasonable doubt. See Pages 4-5, 6-7, 11, 12-13.
3. According to the lower courts opinion, they refused to properly apply Jackson's standard because the Petitioner was convicted of a sexual crime. By inference, had Petitioner been convicted

ISSUES PRESENTED TO GRANT THE REHEARING

of aggravated assault with a deadly weapon, for instance, relief would have been granted to Petitioner under Jackson's standard. Therefore, this Honorable Court should grant the rehearing because the lower courts have violated the Petitioner's Equal Protection Clause, and has unjustly deprived Petitioner of his liberty, because the Prosecution failed to prove their case on each and every essential element of the charged offense beyond a reasonable doubt. See Pages 9-10, 13-14.

4. In the alternative, in the interest of justice, this Honorable Court should grant the rehearing on Its own motion on any issue that this Court sees just, and/then order Petitioner to brief the court's desired issue(s) at hand. See Page 14.

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I. INTRODUCTION:

A Petition for the Rehearing of this Honorable Court's order denying Petitioner's petition for a writ of certiorari is being presented in good faith and not for delay. Sup. Crt. R. 44.2. This Petition for the Rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Id. This Honorable Court should grant the Rehearing because each circuit cites the Jackson standard, but applies the Jackson standard in a conflicting or confusing manner. Therefore, this Court must clarify the correct application of Jackson's standard so that injustice will stop occurring in the United States, just as injustice occurred in Petitioner's case, as explained below.

II. JURISDICTION:

This Honorable Court has jurisdiction to grant the Rehearing of this Court's order denying Petitioner's petition for a writ of certiorari because the order was handed down on October 07, 2019,

and the Petitioner's Rehearing is being filed on or before November 01, 2019. Sup. Ct. R's 41, & 44.2.

III. THE UNITED STATES SUPREME COURT'S JACKSON STANDARD AND INTERPRETATION THEREOF.

In 1979, this Honorable Court granted certiorari to consider Jackson's claim under In re winship, a federal habeas corpus court must consider not whether there was any evidence to support a state-court conviction, but whether there was sufficient evidence to justify a rational trier of the facts to find guilt beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 312-13, 99 S.Ct. 2781, 2785 (1979)(citing Winship, 397 U.S. 358 (1970)). After Winship the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this does not inquire a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. Id., 443 U.S. at 318-19. Instead, the Jackson standard is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id., 443 U.S. at 319. In 1995, this Honorable Court reminds us that "the Jackson standard ... looks to whether there is sufficient evidence which, if credited, could support a conviction" beyond a reasonable doubt. See Schlup v. Delo, 513 U.S. 298, 330, 115 S.Ct. 851 (1995).

In 2010, this Honorable Court reaffirms the Jackson standard

that after viewing all of the evidence induced at trial in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See McDaniel v. Brown, 558 U.S. 120, 131, 133, 130 S.Ct. 665 (2010)(citing Lockhart v. Nelson, 488 U.S. 33, 39, 41, 109 S.Ct. 285). In 2016, this Honorable Court again explains the Jackson standard should be assessed against the elements of the charged crime, not against the jury charge. See Masucci v. U.S., 136 S.Ct. 709, 715 (2016). The Jackson's sufficiency review essentially addresses whether "the government's case was so lacking that it should not have even been submitted to the jury. Id. (citing Burk v. U.S., 437 U.S. 1, 16, 98 S.Ct. 2141 (1978)). The reviewing court considers only the legal question "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. (citing Jackson, 443 U.S. at 319). This limited review does not intrude on the jury's role "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Ibid.

Accordingly, this Supreme Court ultimately held: "All that a defendant is entitled to on a sufficiency challenge is for the court to make a "legal determination" whether the evidence was strong enough to reach a jury at all." Id. (citing Jackson, 443 U.S. at 319, 99 S.Ct. 2781). This statement has a two-fold meaning: First, if the evidence is strong enough to satisfy a probable cause to present to the grand jury, and they present an indict-

ment, than the evidence is strong enough to reach a jury. Petitioner argues that if this is true, than Jackson's precedent did not make such a decision and it violates the beyond a reasonable doubt clause of the United States Constitution. Or, under the second meaning, did the prosecution submit sufficient and substantial evidence, for the jury to consider, that will satisfy the reasonable doubt standard? If this is true, than this Honorable Court should grant rehearing for two reasons: (1) to clarify the two-fold meaning set out in Masucci [136 S.Ct. at 715] because the other courts will take a hold of the controlling effect of egregiously denying sufficiency claims, even when it can be said that the prosecution did not produce sufficient evidence for the jury to consider beyond a reasonable doubt. And, (2) not only is there insufficient evidence to support the crime beyond a reasonable doubt, when Petitioner was a legal adult, but also Petitioner's trial lacks the substantial evidence required for the jury to consider to justify there finding of guilt beyond a reasonable doubt. Therefore, to deny rehearing is to deny the Petitioner his fundamental right to require the state to prove guilt beyond a reasonable, doubt on every single element as charged in the indictment. In re Winship, 397 U.S. 358. Truly, whether Petitioner was a legal adult is an essential element that the prosecution has to prove beyond a reasonable doubt, and in the light most favorable to the prosecution, no rational trier of fact could have found this element beyond a reasonable doubt. Jackson, 443 U.S. at 319, 324 n.16.

IV. THE CIRCUIT COURTS VIEW OF THE JACKSON'S STANDARD AND THEIR APPLICATION THEREOF.

a. The Three Factors That Are Understood and/or Assumed By All Circuits.

1. The Jackson's Standard.

The United States Supreme Court's Jackson standard is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia 443 U.S. at 319; Cf; Linton v. Sceba, 812 F.3d 112, 123 (1st Cir. 2016); Rivera v. Cuomo, 649 F.3d 132, 137 (2nd Cir. 2011); U.S. v. Ozcelik, 527 F.3d 88, 93 (3rd Cir. 2008); U.S. v. Johnson, 492 F.3d 254, 258 (4th Cir. 2007); U.S. v. Flores-Chapa, 48 F.3d 156, 161 (5th Cir. 1995); Tanner v. Yukins, 867 F.3d 661, 674 (6th Cir. 2017); Saxon v. Lashbrook, 873 F.3d 982, 987-88 (7th Cir. 2017); U.S. v. Thompson, 560 F.3d 745, 748-49 (8th Cir. 2009); U.S.v. Nevils, 598 F.3d 1158, 1163-64 (9th Cir. 2010); Kelly v. Roberts, 998 F.2d 802, 807-08 (10th Cir. 1993); U.S. v. Browne, 505 F.3d 1229, 1253 (11th Cir. 2007); & U.S. v. Branham, 515 F.3d 1268 (D.C. Cir. 2008). Truly, the Northern District Court (along with the state court) acknowledged this standard in its opinion. See Appendix B, Pg. 26 in Petitioner's writ of certiorari.

2. The Jackson Standard Must Be Applied With...

The Jackson standard must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law. Jackson, 443 U.S. at 324 n.16; Compare all circuit citations mentioned above in point (a)(1). The term "elements of the offense" means "constituent parts of a crime ... that the prosecution must prove to sustain a conviction." Southern Union Company v. U.S., 567 U.S. 343, 132 s.ct. 2344, 2357-58 (2012)(quoting

Black's Law Dictionary, 597 (9th ed. 2009)). The statute that created the crime in question typically sets forth those constituent parts. And a jury must find the existence of each element beyond a reasonable doubt. Id. (citing U.S. v. Gaudin, 515 U.S. 506, 510, 115 S.Ct. 2310 (1995), Winship, 397 U.S. 358). Truly, the Northern District Court (along with the state courts) did not apply the standard with explicit reference to the substantive elements of the criminal offense. See Appendix B, Pgs. 26-27 in Petitioner's writ of certiorari. Therefore, rehearing should be granted because, had the lower courts applied this standard properly, they would have held that there was insufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt. Jackson, 443 U.S. at 313.

3. The Record Evidence Must Be Viewed Most Favorable To The Prosecution.

"[U]pon judicial review[,] all of the evidence is to be considered in the light most favorable to the prosecution." Jackson, 443 U.S. at 319. What does this term mean? The Ninth Circuit presents a clear worded explanation as shown: "This means that a court of appeals may not usurp the role of the finder of fact by considering how it would have resolved the conflicts, made the inferences, or considered the evidence at trial. Rather...a reviewing court is to presume...that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." Nevils, 598 F.3d at 1163-64. Truly, in Appendix H to Petitioner's writ of certiorari, the Petitioner set the facts out in the light most favorable to the prosecution. And, still, the evidence lacks

sufficient support to justify that a jury could have found Petitioner guilty, as a legal adult, beyond a reasonable doubt. Jackson, 443 U.S. at 313, 324. Rehearing should be granted to stop injustice from occurring now and in the future under the Jackson's sufficiency review.

b. The Four Different Applicative Views Of Jackson's Sufficiency Standard.

1. The Evidence Must Be Adequate And Substantial In Order To Be Sufficient.

According to the Second, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits, the evidence adduced at trial must be adequate and substantial in order to allow any rational fact finder to find the essential elements of the crime beyond a reasonable doubt. Under this applicative view of the Jackson's sufficiency standard combined, it will look like the following:

Jackson thus establishes a two-step inquiry for considering a challenge to a conviction based on sufficiency of the evidence. Nevils, 598 F.3d at 1163-64. First, a reviewing court must consider the evidence presented at trial in the light most favorable to the prosecution. Id; Rivera v. Cuomo, 649 F.3d at 137; Brown v. Palmer, 441 F.3d 347, 350 (6th Cir. 2006). This means that a court of appeals may not usurp the role of the finder of fact by considering how it would have resolved the conflicts, made the inferences, even in the face of conflicting inferences, or considered the evidence at trial. Nevils, 598 F.3d at 1163-64; Thompson, 560 F.3d at 748-49; Roberts, 998 F.2d at 807-08; Browne, 505 F.3d at 1253.

Second, after viewing the evidence in the light most favorable to the prosecution, the reviewing court must determine whether this evidence, so viewed, is adequate to allow any rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt. Nevils, 598 F.3d at 1163-64; Roberts, 998 F.2d at 807-08 (to be sufficient, the evidence to support the conviction must be substantial; that is, it must do more than raise a mere suspicion of guilt); Browne, 505 F.3d at 1253 (citing U.S. v. Starrett, 55 F.3d 1525, 1541 (11th Cir. 1995))("In reviewing conspiracy convictions, the question is whether there is substantial evidence to support the verdicts); & Tanner v. Yukins, 867 F.3d at 674 (It is impossible to see how a rational jury could have found the defendant guilty beyond a reasonable doubt without an explanation for the unknown person's blood on the victim's shirt). Finally, this review is ultimately a question of law. Tapia v. Tansy, 926 F.2d 1554 (10th Cir. 1991). Therefore, this standard must be applied with explicit reference to the substantive elements of criminal offense as defined by state law. Langston v. Smith, 630 F.3d 310, 314 (2nd Cir. 2011); Palmer, 441 F.3d at 350.

The Lower Court, in Petitioner's case, refused to properly apply the Jackson's standard. See Appendix B, Pgs. 25-28; D, Pgs. 2-3 in Petitioner's writ of certiorari. Truly, the Northern District Court's understanding of Jackson's standard is reversably flawed as follows:

"The Law Permits wide latitude in evaluating the testimony of a child witness who is the complainant in a sexual abuse case, as opposed to a capital murder case, a robbery case, a murder case or any other case. The same latitude appears to be granted to an adult testifying

about events that occurred in childhood, as in this case. Here, K.S. was nineteen years old when she testified about the events for which [Petitioner] was convicted. If the jurors determined that the evidence was sufficient to convince them beyond a reasonable doubt that the offenses occurred, the evidence is sufficient under the law." See Appendix B, Pg. 27.

Petitioner argues that where a fact to be proved is also an element (that is, Petitioner's age) of the offense, it is not enough that the inference in the government's favor are permissible. The inferences must be sufficiently supported to permit a rational juror to find that the element is established beyond a reasonable doubt. Langton v. Smith, 630 F.3d 310, 314-15 (2nd cir. 2011). Further, for a court to hold such a ruling deprives the Petitioner his Equal Protection Clause of the United States Constitution. U.S. Const. Amend. XIV, Sec. 1. The Court asserts that because Petitioner was convicted of a sexual offense a wide latitude, as opposes to any other offense, in evaluating a nineteen year old's testimony is sufficient as long as the jurors determined that the evidence was sufficient to convince them beyond a reasonable doubt. Petitioner argues that if he was convicted of assault with a deadly weapon based on the same evidence adduced at trial, than the court would have held the evidence as insufficient. Truly, the lack of sufficient testimony should be no different in a sexual offense from any other crime committed. In other words, to deny rehearing is to deny the Petitioner equal justice by refusing to enforce and assure that its lower courts treat all crimes equally when faced with the decision based on Jackson's sufficiency standard. Cf., Britain v. State, 412 S.W.3d 518, 521-

522 (Tex.Crim.App. 2013)("In this case, the state has failed to prove an essential element, that appellant acted with negligence, something that cannot be merely eliminated from the conviction.").

Likewise, the Prosecution has failed to prove the essential element, that Petitioner committed the charged offenses as a legal adult, beyond a reasonable doubt. Truly, can the Petitioner ask for this Court to uphold the Petitioner's right to be equally protected by the laws, and to hold the prosecution to their burden in proving their case beyond a reasonable doubt, in which they failed to do? Therefore, Rehearing should be granted because the Petitioner's freedom is being arbitrarily deprived due to the prosecution's failures to prove Petitioner being a legal adult, as required by law.

2. The Jackson's Standard Is Such A Very High Hurdle That Relief Is Rarely Granted.

According to the Third, Seventh, and D.C. Circuits, the Jackson's Standard is such a very high hurdle that unless the record is devoid of evidence, no petitioner can obtain a reversal. Under this applicative view of the Jackson's sufficiency standard combined, it will look like the following:

"A defendant seeking to overturn a jury's verdict, based on the sufficiency of the evidence "must overcome a very high hurdle." U.S. v. Ozcelik, 527 F.3d at 93; U.S. v. Boyles, 57 F.3d 535, 542 (7th Cir. 1995). Our standard for sufficiency review is narrow: we will reverse only when the record is devoid of any evidence, regardless of how it is weighed, from which a jury could find guilt beyond a reasonable doubt. Boyles, 57 F.3d at 542; U.S. v. Voigt,

89 F.3d at 1080 (quoting Jackson, 443 U.S. at 319); Saxon v. Lashbrook, 893 F.3d 982, 987-88 (7th Cir. 2017). Therefore, we do not reassess or reweigh the evidence or credibility presented at trial, and we give full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inference of fact. U.S. v. Hedaithy, 392 F.3d 580, 604-05 (3rd Cir. 2004); U.S. v. Branham, 515 F.3d 1268 (D.C. Cir. 2008).

Truly, this "very heavy burden" view is constitutionally infirm because a federal habeas corpus court must consider not whether there was any evidence to support a state-court conviction, but whether there was sufficient evidence to justify a rational trier of the facts to find guilt beyond a reasonable doubt. Jackson, 443 U.S. at 313. This standard of review is also likened to the Thompson's no evidence rule that this Honorable Court overruled in Jackson [443 U.S. at 314]. This very high and heavy hurdle view denies the Petitioner the most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty. Id. Arguably, even with this very heavy burden, not one witness testified to Petitioner being a legal adult, only to conduct of Petitioner being a juvenile, therefore, rehearing should be granted by this Court.

3. The Equipose Rule Is Tantamount To Reasonable Doubt.

Unlike the other circuits, the First and Fifth Circuit, apply the equipose rule to the Jackson's standard. That is, if the evidence in light most favorable to the prosecution gives equal or nearly equal support to a theory of guilt and a theory of innocence, the conviction should be reversed. Under this applicative view of the Jackson's sufficiency standard combined, it will look

like the following:

The Jackson standard must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law. Linton v. Sceba, 812 F.3d at 123; U.S. v. Flores-Chapa, 48 F.3d at 161. But if the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, the conviction should be reversed. U.S. v. Pennington, 20 F.3d 593 (5th Cir. 1994); Linton v. Sceba, 812 F.3d at 123 ("This court must reverse because equipoise is tantamount to reasonable doubt, emphasizing that the equal-evidence rule takes hold only after we have drawn all reasonable inferences in favor of the verdict.").

As applied to Petitioner's case, after the evidence is viewed most favorable to the prosecution, rehearing must be granted because the evidence adduced at trial gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence. Linton v. Sceba, 812 F.3d at 123 (This court must reverse because equipoise is tantamount to reasonable doubt). Further, the Fifth Circuit refused to apply their own standard of review to Petitioner's case. In ringing terms, the statement: "If the jurors determined that the evidence was sufficient to convince them beyond a reasonable doubt that the offenses occurred, the evidence is sufficient under the law." See Appendix B, Pg. 27 in Petitioner's writ of certiorari. Axiomly, the Jackson's focus is whether there was sufficient evidence to justify a rational jury to find guilt beyond a reasonable doubt. Jackson, 443 U.S. at 313. Based on the record evidence, there is not sufficient evidence to

even justify a rational jury's finding of Petitioner being a legal adult, which is an essential element in Petitioner's case, only sufficient evidence (although highly contradictory evidence against proving the truth) to support Petitioner being a juvenile. Jackson, 443 U.S. at 313. Therefore, rehearing is mandatory because this Court should not standby and allow its lower courts to unjustly deprive Petitioner of his liberty, without making the Prosecution to prove each essential element beyond a reasonable doubt.

4. Fourth Circuit's Finding Of Insufficient Evidence Without Acknowledging Jackson's Sufficiency Standard.

Finally, the Fourth Circuit made a finding of insufficient evidence, without acknowledging Jackson's Sufficiency standard, based on Statutory authority only. The Fourth Circuit's rationale is seen in the following:

In United States v. Williams, the Fourth Circuit held that evidence was sufficient to support a conviction for aggravated sexual abuse but insufficient to support a conviction for sexual abuse. Williams, 89 F.3d 165, 165 (4th Cir. 1996). Specifically, an application of force to open the victims legs for intercourse has been deemed sufficient to satisfy 18 U.S.C. § 2241(a)(1)'s force element, but this force would not constrain the victim's movements in the manner contemplated by the physical restraint guidelines. U.S. v. Johnson 492 F.3d 254, 258 (4th Cir. 2007)(citing Williams, 89 F.3d at 166, 168). Likewise, the Texas Penal Code, section 8.07, bars all criminal prosecution, unless the juvenile court waives jurisdiction. Tex.Penal.Code.Sec. 8.07(b). Therefore, rehearing

must be granted because there is no juvenile court's waiver of jurisdiction. The Prosecution choose to proceed in their prosecution alleging criminal acts committed on or about May 01, 2003, making Petitioner 18 years old. Truly, there may be sufficient evidence that could have justified criminal acts when Petitioner is a juvenile; however, there is insufficient evidence to support the criminal acts committed when Petitioner reached the age of a legal adult. Again, whether Petitioner was a legal adult is an essential element that the prosecution has to prove beyond a reasonable doubt, and in the light most favorable to the prosecution, no rational trier of fact could have found this element beyond a reasonable doubt. The prosecution failed to do so in Petitioner's case; therefore, a reversal should have been granted to secure justice and Petitioner's equal protection clause, and this Honorable Court should grant and make sure that justice prevails.

V. IN THE ALTERNATIVE...

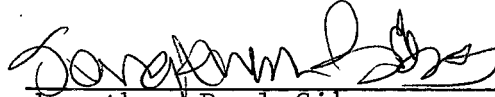
In the alternative, the Petitioner implores this Honorable Court, in the Interest of Justice, to rehear Petitioner's writ of certiorari on the court's own motion. And, if this Honorable Court wishes for Petitioner to brief any other question or argument, not presented in this Petition for Rehearing, than Petitioner respectfully requests for this Court to order Petitioner to address any other issue this Honorable Court sees fit to apply to justice.

VI. CONCLUSION AND PRAYER:

This Honorable Court should grant the rehearing of Petitioner's writ of certiorari. In the alternative, in the Interest of Justice, Petitoiner prays this Honorable Corut will grant the rehearing on

this Honorable Court's own motion.

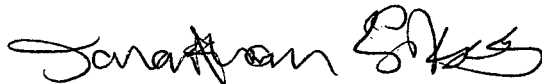
Respectfully Submitted,



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VII. INMATE DECLARATION:

I, Jonathan Paul Sikes, TDCJ No. 01621814, being incarcerated in the TDCJ-CID Coffield unit in Anderson County, Texas, declares that the foregoing is true and correct under the penalty of perjury. Executed on this day of October 30, 2019.



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In The
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JONATHAN PAUL SIKES

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Vs.

LORIE DAVIS, Director, TDCJ-CID

Respondent

DECLARATION OF INMATE FILING

I am an inmate confined in an institution. Today, October 30, 2019, I am depositing one (1) true and correct copy of my Petition for the Rehearing of this Court's denial of Petitioner's writ of certiorari and motion for informa pauperis to this Honorable Court, in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf. see Richards v. Thaler, 710 F.3d 573, 579 (5th Cir. 2013).

I declare under the penalty of perjury that the foregoing is true and correct. Executed on this day of October 30, 2019.



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