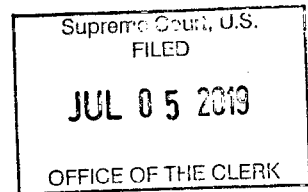


No. 19-5222

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JAMES ARTHUR MECKS III - PETITIONER

VS.

LORDE DAVES, DIRECTOR TDCJ-CID - RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT

(VIA)

TEXAS COURT OF CRIMINAL APPEALS 2002-2005
LAST MERITS RULING

PETITION FOR WRIT OF CERTIORARI

JAMES ARTHUR MECKS III

RAMSEY I UNIT 1100 fm 655

ROSHARON, TEXAS 77583

(281) 595-3491

QUESTIONS PRESENTED

- ① DID THE STATE OF TEXAS PROPERLY APPLY THE PROCEDURAL BAR (STATUTE OF LIMITATIONS IN WRIT NO. W89-85562 T (C-D) PURSUANT TO ART. 11.07(4) OF THE CODE OF CRIM. PROC. WHEN EXTRAORDINARY CIRCUMSTANCES EXIST TO HAVE TRIGGERED EQUITABLE TOLLING?
- ② DID THE STATE COURT (TRIAL JUDGE JACK HAMPTON) ABUSE HIS DISCRETION VIOLATING PETITIONER'S DUE PROCESS RIGHTS AT POST-TRIAL JUROR'S HEARING WHERE ONLY 9 OF THE 12 JUROR'S WERE CALLED UPON TO ANSWER TO THE TRUSTWORTHINESS OF THEIR VERDICT?
- ③ WAS TRIAL COUNSEL EGREGIOUSLY INEFFECTIVE BY CAUSING EXTRINSIC INFORMATION OF PETITIONER'S PENDING CHARGES (CAPITAL MURDER & AGGRAVATED ROBBERY) TO BE POSTED TO THE PUBLIC WHICH INFECTED THE ENTIRE JURY PANEL PRE-TRIAL - AN ERROR NEVER BROUGHT TO THE COURT'S ATTENTION UNTIL AFTER TRIAL. WAS PETITIONER'S SIXTH AMENDMENT RIGHT TO EFFECTIVE TRIAL COUNSEL VIOLATED IN AN ACCUMULATION OF TRIAL COUNSEL ERRORS?
- ④ WAS APPELLATE COUNSEL JOHN D. NATION (DALLAS, TX.) INEFFECTIVE BY FILING ONLY ONE (1) ERROR IN MECKS V. STATE NO. 05-90-00553-CR (TEX-APP. - DALLAS MAR. 14TH 1991, PET. REF'D)?
- ⑤ SHOULD EQUITABLE TOLLING HAVE BEEN TRIGGERED BY EITHER THE STATE OR FEDERAL COURTS WHEN IN 2016 PETITIONER FOUND OUT THAT HIS COURT APPOINTED APPELLATE ATTORNEY LIED TO HIM BACK IN 1990 CONCERNING THE FACT THAT A RECORD OF THE POST-TRIAL JUROR'S TESTIMONY DOES IN FACT EXIST WHICH IS A BASIS FOR MANY CONSTITUTIONAL VIOLATIONS INCLUDING: JUROR MISCONDUCT - JURY BIAS, INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL - AND - ABUSE OF DISCRETION OF THE TRIAL COURT?

LIST OF PARTIES

[X] ALL PARTIES DO NOT APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

(1.) JAMES A. MEEKS III
(PETITIONER)

VS.

STATE OF TEXAS
(RESPONDENT)

CAUSE NO. W89-85562T (C-D)

(2.) JAMES A. MEEKS III
(PETITIONER)

VS.

LORIE DAVIS, Dir. TDCJ-CID
(RESPONDENT)

USDC No. 3:18-CV-1537 D;
18-11027 5TH Cir.

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WRIT NO. W89-85562T (C-D) STATE
COURT DALLAS, TX.
- APPENDIX D. FIFTH CIRCUIT COURT OF APPEALS
DENIAL FOR A RE-HEARING EN BANC
REQUEST

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at N/A; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 04-15-2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- UNITED STATES CONSTITUTIONAL AMENDMENT SIXTH = RIGHT TO EFFECTIVE COUNSEL
- UNITED STATES CONSTITUTIONAL AMENDMENT SIXTH = RIGHT TO A FAIR AND IMPARTIAL JURY
- UNITED STATES CONSTITUTIONAL AMENDMENT FIFTH = RIGHT TO DUE PROCESS AS APPLICABLE VIA,
- THE UNITED STATES CONSTITUTIONAL AMENDMENT FOURTEENTH AMENDMENT
- CONFRONTATION CLAUSE VIOLATIONS
- STATE WRIT OF HABEAS CORPUS 11.07 (4) PROVISIONS
- FEDERAL HABEAS CORPUS 28 USC § 2254 (d)(2)(6), (7)
- FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b)(3)(6)

STATEMENT OF THE CASE

A JURY CONVICTED PETITIONER JAMES ARTHUR MECKS III OF THE OFFENSE OF AGGRAVATED ROBBERY IN 1989-90 IN THE 283RD DISTRICT COURT OF DALLAS, TEXAS IN TRIAL COURT CAUSE NO. F89-85562-ST. THE SAME JURY ASSESSED PUNISHMENT AT SEVENTY FIVE YEARS AGGRAVATED CONFINEMENT COMBINED WITH A \$ 5,000 FINE. PETITIONER'S COURT APPOINTED TRIAL ATTORNEY DONALD J. DRISCOLL (DALLAS, TEX.) IMMEDIATELY FILED FOR A NOTICE OF APPEAL. PETITIONER'S GRANDMOTHER BILLIE RUTH MARTINEZ nee TUBRE APPROACHED TRIAL COUNSEL (DONALD DRISCOLL) AND STATED "... BOY WE ARE SURE GLAD HE DIDN'T GET THE DEATH PENALTY..." HE REPLIED "... HE COULDN'T, HE WAS ONLY GOING FOR AGGRAVATED ROBBERY..." PETITIONER'S GRANDMOTHER THEN BEGAN TO RELATE TO MR. DRISCOLL THAT SHE HAD ATTENDED THE ENTIRE PROCEEDINGS AND THAT PRIOR TO THE JURY SELECTION - AND EVEN AS POTENTIAL JURORS WERE OUTSIDE THE COURT ROOM AWAITING VOIRE DIRE - PETITIONER'S NAME WAS ON THE OUTSIDE COURT DOCKET (POSTED ON THE WALL) - AND THAT THE FOLLOWING APPEARED :

- (1) JAMES ARTHUR MECKS III - CAPITAL MURDER
- (2) JAMES ARTHUR MECKS III - AGGRAVATED ROBBERY
- (3) JAMES ARTHUR MECKS III - AGGRAVATED ROBBERY

AS EACH OF THESE WERE TOTALLY SEPERATE CHARGES ALSO KNOWN TO DEFENSE COUNSEL AS HE HAD REPEATEDLY OFFERED PETITIONER

A PLEA BARGAIN (THREE TIMES OF AN AGGRAVATED LIFE SENTENCE TO PLEA TO ALL THREE CHARGES) IN THE YEAR PREVIOUS TO THE JURY TRIAL. PETITIONER'S GRANDMOTHER SAID THAT SHE HAD HEARD ONE OF THE POTENTIAL JUROR'S SAY TO ANOTHER POTENTIAL JUROR "... Boy, I HOPE WE DON'T GET THIS GUY..." So, PETITIONER'S GRANDMOTHER, BEING IGNORANT OF THE LEGAL/JUDICIAL SYSTEM, HAD ASSUMED PETITIONER WAS GOING TO TRIAL FOR ALL THREE CHARGES. DEFENSE COUNSEL IMMEDIATELY INFORMED THE JUDGE JACK HAMPTON. DEFENSE COUNSEL THEN FILED A MOTION FOR 'ABATEMENT OF APPEAL' WHICH WAS ACCEPTED BY THE COURT FOR THE PURPOSE OF QUESTIONING THE TRUSTWORTHINESS OF THE JUROR'S VERDICT. Only 9 of the 12 JURORS WERE CALLED UPON TO TESTIFY. ALL 9 JUROR'S STATED (FROM ONE EXTENT TO THE OTHER)

"... THAT THEY READ THE CHARGES ON THE OUTSIDE DOCKET PRE VOIRE DIRE..."

"... THAT THEY DISCUSSED THESE OTHER CHARGES THROUGHOUT THE ENTIRETY OF TRIAL..."

"... THAT THEY TALKED ABOUT THE CHARGES IN: THE DELIBERATION ROOM, THE ELEVATOR AND OTHER PLACES..."

"... WE TOLD THE FOREMAN OF THE JURY (BARBARA BARNETT) WHO STATED TO US..." "... I HAD A FRIEND ON ANOTHER JURY WHO HAD A SIMILAR SITUATION AND THEY HAD TO HAVE A WHOLE NEW TRIAL..."

THIS WAS THE TESTIMONY ELICITED AT THE POST TRIAL HEARING. THE ASSISTANT DISTRICT ATTORNEY JUST ASKED EACH JUROR ONE QUESTION

"... DID THIS EFFECT YOUR DECISION?"

THE ANSWER BEING "NO."

THE JUDGE THEN DENIED A MOTION FOR RETRAIL AND THE CAUSE WAS PLACED BACK ON APPEAL. MR. JOHN D. NATIONS (DALLAS, TX) WAS THEN APPOINTED TO PETITIONER BY THE COURT TO FILE AN APPEAL. MR. NATION THEN FILED ONE ERROR (ASSERTING THAT THE TRIAL COURT ERRED DURING PUNISHMENT HEARING IN ADMITTING DOCUMENTARY EVIDENCE OF A PROPER PRIOR CONVICTION WITHOUT A PROPER FOUNDATION). SEE NO. 05-90-00553-CR IN THE COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS AFF'D MARCH 14, 1991. PREVIOUS TO THIS OPINION PETITIONER HAD WRITTEN TO MR. NATION FROM THE BETO 1 UNIT PRISON IN TENNESSEE COLONY, TX. IN 1990. PETITIONER ASKED HIS APPELLATE ATTORNEY MR. NATION "...WHY DIDN'T YOU FILE ON JURY PREJUDICE, JURY MISCONDUCT, ETC... ETC..." AS PETITIONER IMPARTED TO MR. NATION WHAT HE CONSIDERED TO BE AN IMPORTANT APPELLATE ASPECT, THAT BEING THE POST TRIAL JUROR'S TESTIMONY. MR. NATION WROTE PETITIONER BACK ONE TIME STATING HIS REASONS FOR FILING THE WAY HE DID. HE TOLD PETITIONER THIS:

"...THERE IS NO RECORD OF ANY POST-TRIAL JUROR'S TESTIMONY. AND I FILED ON EVERYTHING I SAW..." (PARAPHRASING)

PETITIONER WROTE TO MR. NATIONS SEVERAL MORE TIMES TO NO AVAIL AS MR. NATIONS NEVER COMMUNICATED WITH PETITIONER IN ANY WAY WHATSOEVER. PETITIONER WAS MISLED AT THIS TIME AND BELIEVED HIS APPELLATE ATTORNEY UNTIL THE YEAR 2016.

IN 2016 PETITIONER WAS CHARGED WITH A FEDERAL CHARGE OF FELONY WITH A FIREARM AND RECEIVED A 6YR. SENTENCE. PETITIONER WAS REPRESENTED BY A FEDERAL PUBLIC DEFENDER

A MRS. LAUREN ANITA WOODS (DALLAS, TX.). MRS. WOODS PROVIDED PETITIONER WITH EXTENSIVE DOCUMENTS, ONE SUCH DOCUMENT WAS A "MOTION TO ABATE APPEAL" IN CAUSE NO. W89-85562-T, WHICH WAS ACCEPTED AND A POST TRIAL HEARING WAS HELD. AT THIS TIME PETITIONER BECAME AWARE THAT HIS APPELLATE ATTORNEY HAD LIED TO HIM ALL THESE YEARS AGO. HENCE, THIS LITIGATION STARTED AND A RAPID SUCCESSION OF PROCEDURAL BAR DENIALS HAVE TAKEN PLACE FROM THE TRIAL COURT, THE TEXAS SUPREME COURT, THE U.S. DISTRICT COURT - NORTHERN DISTRICT OF TEXAS - AND THE FIFTH CIRCUIT U.S. COURT OF APPEALS.

NOW, PETITIONER SEEKS HIS LAST OPTION IN A CASE WHERE A FUNDAMENTAL UNFAIRNESS TOOK PLACE (PRE-TRIAL) AND HE WAS TRIED BY A PREJUDICED JURY. THEN HIS APPELLATE ATTORNEY LIED TO HIM ABOUT ANY RECORD PROOF OF HIS ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS. NOW, 28 YRS. LATER, VIA OF A THOROUGH FEDERAL PUBLIC DEFENDER, PETITIONER DISCOVERED THAT HIS ATTORNEY LIED TO HIM CONCERNING HIS APPELLATE SITUATION AND NOW SEEKS TO HAVE THIS COURT ADDRESS THE CONSTITUTIONAL VIOLATIONS THAT OCCURRED THROUGHOUT THIS CAUSE NUMBER.

REASONS FOR GRANTING THE PETITION

I BELIEVE THAT THE DECISION(S) OF THE LOWER COURTS TO BE ERRONEOUS, AND, I FURTHER BELIEVE IT TO BE VERY IMPORTANT FOR THE SUPREME COURT TO QUESTION THE UNDERLYING INHERENT CONSTITUTIONAL VIOLATIONS THAT TOOK PLACE IN THIS CAUSE. I FURTHER BELIEVE THAT THE DECISION OF THE U.S. APPELLATE COURT FOR THE FIFTH CIRCUIT IS IN CONFLICT WITH OTHER FEDERAL RULINGS AND THAT OTHERS SIMILARLY SITUATED TO THIS CAUSE WILL BENEFIT FROM THIS SUPREME COURT REVIEW

ARGUMENT

(A) THE FIFTH CIRCUIT UNITED STATES COURT OF APPEALS IN ITS DENIAL ORDER OF 4/15/2019 - AND - SUBSEQUENT DENIAL OF PETITIONER'S REQUEST FOR RE-HEARING EN-BANK DATED 5/15/2019 - THE FIFTH CIRCUIT DENIED PETITIONER'S FOLLOWING REQUESTS:

- REQUEST FOR A CERTIFICATE OF APPEALABILITY
- IN FORMA PAUPERIS REQUEST FOR APPEAL
- APPOINTMENT OF COUNSEL

THE COURT CITED THE FOLLOWING AUTHORITIES TO SUPPORT ITS DENIAL: SLACK V. MCDANIEL 529 U.S. 473, 484 (2000), STATING "...WHERE, AS HERE, THE DISTRICT COURT DENIED RELIEF ON PROCEDURAL GROUNDS, A COA SHOULD BE GRANTED." WHEN THE PRISONER SHOWS, AT LEAST, THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF

OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING." SLACK, 529 U.S. AT 484, THIS DECISION IS IN ERROR FOR THE FOLLOWING REASONS:

- THE DENIAL ON PROCEDURAL GROUNDS IS IN CONTENTION BASED ON TWO OPPOSING POSITIONS OF LAW THAT WOULD ALLOW THE LOWER COURTS TO VIEW THE MERITS OF PETITIONERS CLAIMS OF: INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL IN:

HOLLAND V. FLORIDA 130 S. Ct. 177, 560 US 631 (2010) (Holding THAT AN ATTORNEY'S MISCONDUCT, VIA, LYING TO, MISLEADING, AND IGNORING HIS CLIENT'S REQUESTS AND COMMUNICATION ATTEMPTS CAN ALLOW LOWER COURTS TO VIEW THE MERITS OF SUCH A CLAIM EVEN WHEN A PROCEDURAL BAR (STATUTE OF LIMITATIONS) MAY OTHERWISE APPLY.

(A) PETITIONER AVERS THAT THIS EXACT SCENARIO EXISTS IN THIS CAUSE WHICH SHOULD HAVE BEEN CONSIDERED BY THE LOWER COURTS IN THIS CAUSE: BOTH STATE (COURT OF CRIMINAL APPEALS TEXAS AND THE (UNITED STATES DISTRICT COURT - NORTHERN DISTRICT OF TEXAS DALLAS DIVISION). INSTEAD, ALL LOWER COURTS RULED CONTRARY TO THE HOLLAND, SUPRA AUTHORITIES.

(B) PROCEDURAL GROUNDS DENIAL(S) BY ALL LOWER COURTS WERE ALSO CONTRARY TO THE FOLLOWING:

TREVENO V. THALER 133 S. Ct. 1911 (2013 USLEXIS 3980); AND
MARTINEZ V. RYAN 132 S. Ct. 1309, 566 U.S. 1, (2012);

IN THAT:

THERE WAS BOTH : TRIAL AND APPELLATE COUNSEL ERRORS THAT WOULD HAVE ALLOWED THE ABOVE SUPREME COURT RULINGS TO ALLOW FOR THE LOWER COURTS TO GET TO THE MERITS OF PETITIONERS CONSTITUTIONAL CLAIMS FOR THE FOLLOWING REASONS:

- TRIAL COUNSEL (DONALD J. DRISCOLL) REPRESENTED PETITIONER IN 1989 IN DALLAS, TX. IN THE 283RD JUDICIAL DISTRICT COURT IN DALLAS, TX FOR THREE SEPARATE OFFENSES (2 CHARGES WHICH WERE SUBSEQUENTLY DROPPED BY THE STATE - THAT WAS NO PART OF A PLEA-AGREEMENT). THESE CHARGES WERE:

CAPITAL MURDER (DISMISSED)

AGGRAVATED ROBBERY (DISMISSED)

AGGRAVATED ROBBERY (75 YRS. AGG. JURY TRIAL)

DONALD J. DRISCOLL REPRESENTED PETITIONER FOR APPX. ONE YEAR PRIOR TO THE JURY TRIAL IN WHICH COUNSEL OFFERED PETITIONER AN AGGRAVATED LIFE SENTENCE (3 TIMES IN 1 YR.) TO PLEA TO ALL OF THE ABOVE. PETITIONER REFUSED (COUNSEL WOULD THEN CALL PETITIONER A "DIRT BAG") THEN APPX. 1 YR. LATER A JURY TRIAL TOOK PLACE. ON THE DAY OF TRIAL ALL THREE CHARGES WERE POSTED ON THE OUTSIDE COURT DOCKET AND THE JURORS READ THIS INFORMATION. VOIRE DIRE TOOK PLACE AND THIS EXTRINSIC EXPOSURE WAS NOT DISCOVERED. THE WHOLE TRIAL TOOK PLACE WITH NO FOREMAN OF THE JURY (BARBARA BARNETT) INFORMING THE COURT THAT JUROR'S HAD BEEN DISCUSSING THESE EXTRINSIC CHARGES ALL THROUGHOUT THE TRIAL. AFTER TRIAL - WHEN DONALD J. DRISCOLL DID HEAR ABOUT THIS POSSIBLE JURY TAINT - PREJUDICE - MISCONDUCT - HE FILED A "MOTION TO ABATE" THE APPEAL IT WAS ACCEPTED

BY JUDGE JACK HAMPTON 283RD JDC DALLAS, TX. AND A POST-TRIAL HEARING WAS HELD SOME SEVERAL WEEKS LATER. ONLY 9 OF THE 12 JURORS COULD BE FOUND AT THAT TIME. THE JUDGE ALLOWED THE 9 TO BE QUESTIONED AS TO THE TRUSTWORTHINESS OF THEIR VERDICT - AND TRIAL COUNSEL DID NOT EVEN OBJECT TO THIS CONFRONTATION CLOUSE VIOLATION. (AT THIS TIME THE DICTATES OF SMITH V. PHILLIPS 102 S. CT. 940 (HOLDING: "THE REMEDY FOR ALLEGATIONS OF JUROR PARTIALITY IS A HEARING IN WHICH THE DEFENDANT HAS THE OPPORTUNITY TO PROVE ACTUAL BIAS" (CITING REMMER V. UNITED STATES 347 US 227, 98 L. ED. 654, 74 S. CT. 450 (1954)). IN A POST TRIAL HEARING, IN A SITUATION SUCH AS THIS THE JUDGE WAS SUPPOSED TO "DETERMINE THE CIRCUMSTANCES, THE IMPACT THEREOF UPON THE JUROR, AND WHETHER OR NOT [THEY WERE] PREJUDICIAL, IN A HEARING WITH ALL INTERESTED PARTIES PERMITTED TO PARTICIPATE." REMMER, SUPRA. THIS DID NOT TAKE PLACE IN THIS CAUSE THEREFORE THE DICTATES OF SMITH V. PHILLIPS, SUPRA WERE VIOLATED HERE

- THE CONSTITUTION REQUIRES ONLY THAT A DEFENDANT BE GIVEN AN OPPORTUNITY TO PROVE ACTUAL BIAS. SEE CHANDLER V. FLORIDA 449 US 560, 575, 66 L. ED. 2d 740, 101 S. CT. 802, (1981); see also NEBRASKA PRESS ASS'N. V. STUART 427 US 539, 563-565, 49 L. ED. 2d 683, 96 S. CT. 2791 (1976); ESTES V. TEXAS 381 US 532, 565, 14 L. ED. 2d 543, 85 S. CT. 1628 (1965), AND

TRIAL JUDGES RETAIN THE POWER TO SAFEGUARD THE INTERESTS OF THE DEFENDANT WHERE CIRCUMSTANCES SUGGEST A REAL DANGER OF BIAS.

- IN THIS CASE, ALL 9 JURORS CALLED UPON TO TESTIFY, DID SO, UNDER OATH, POST-TRIAL AND ALL STATED KNOWLEDGE OF EXTRINSIC INFORMATION, THE LENGTHS OF THEIR DISCUSSIONS, AND THE FOREMAN OF THE JURY STATED THAT WHEN THE JURY BROUGHT THIS TO HER ATTENTION - INSTEAD OF INFORMING THE COURT (JURY MISCONDUCT) SHE TOLD THE JUROR'S "... I HAD A FRIEND ON ANOTHER JURY WITH A SIMILAR SITUATION... AND THEY HAD TO HAVE A NEW TRIAL." (COERCIVE SUGGESTING 'IF THEY SAID ANYTHING TO THE COURT A NEW TRIAL WOULD ENSUE!!')

- THE JUDGE HEARD ALL THIS TESTIMONY - YET HE DIDN'T CALL ON THE OTHER 3 JUROR'S, THEREFORE THE JUDGE VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND CONFRONTATION RIGHTS, AND SUCH DETERMINATION WAS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW. FURTHERMORE, TRIAL COUNSEL WAS INEFFECTIVE IN VIOLATION OF PETITIONER'S SIXTH AMENDMENT CONSTITUTIONAL GUARANTEE OF EFFECTIVE COUNSEL, VIA, BEING THE CATALYST TO THE JURY TAUNT AND THEN COMPOUNDING THE ISSUES BY NOT OBJECTING TO THE ABUSE OF DISCRETION OF TRIAL COURT, INTER ALIA.

- THE FEDERAL COURTS WERE MISGUIDED IN THEIR STRICT PROCEDURAL (STATUTE OF LIMITATIONS) DENIALS AS WELL. AS SECTION 2254(d) RECOGNIZES THAT DEFERENCE TO STATE COURTS FACTFINDING PROCESS IS IN FAVOR OF THE STATE, HOWEVER, THIS PRESUMPTION MAY BE

OVERCOME WHEN "THE APPLICANT DID NOT RECEIVE A FULL, FAIR, AND ADEQUATE HEARING IN THE STATE COURT PROCEEDINGS," OR WHEN "HE WAS OTHERWISE DENIED DUE PROCESS OF LAW." §§ 2254 (d)(6), (7)

[FACT] THE EVIDENTIARY HEARING (POST-TRIAL JUROR'S TESTIMONY PROCESS) ON WHICH THE FACT-FINDING WAS BASED WAS INHERENTLY UNRELIABLE. SMITH V. PHILLIPS, SUPRA, AS IT WOULD HAVE ONLY TAKEN ONE JUROR TO STATE THAT HIS OR HER DECISION TO IMPOSE A VERDICT OF GUILTY AND THEN TO IMPOSE A 75 yr. AGGRAVATED SENTENCE WAS BASED ON THEIR KNOWLEDGE OF DEFENDANT'S PENDING CAPITAL MURDER AND AGGRAVATED ROBBERY CHARGES WHICH THEY DISCUSSED THROUGHOUT THE ENTIRETY OF THE PROCEEDINGS PRE-TO-POST TRIAL, WITH NO CURATIVE COURT MEASURES.

PETITIONER WISHES TO ADD THE FOLLOWING:

IN THE EXCEPTIONAL SITUATIONS THAT MAY REQUIRE APPLICATION OF AN "IMPLIED bias" DOCTRINE, THE LOWER FEDERAL COURTS NEED NOT BE DETERRED BY 28 USC § 2254 (d), WHICH PROVIDES THAT IN A FEDERAL HABEAS PROCEEDING

" A DETERMINATION AFTER A HEARING ON THE MERITS OF A FACTUAL ISSUE, MADE BY A STATE COURT OF COMPETENT JURISDICTION ..., EVIDENCED BY A WRITTEN FINDING, WRITTEN OPINION, OR OTHER RELIABLE AND ADEQUATE WRITTEN INDICIA, SHALL BE PRESUMED TO BE CORRECT, UNLESS THE APPLICANT SHALL ESTABLISH OR IT SHALL OTHERWISE APPEAR ...

" (2) THAT THE FACTFINDING PROCEDURE EMPLOYED BY THE

STATE COURT WAS NOT ADEQUATE TO AFFORD A FULL AND FAIR HEARING;

"(6) THAT THE APPLICANT DID NOT RECEIVE A FULL, FAIR, AND ADEQUATE HEARING IN THE STATE COURT PROCEEDING; OR

"(7) THAT THE APPLICANT WAS OTHERWISE DENIED DUE PROCESS OF LAW IN THE STATE COURT PROCEEDING, AND

IN THOSE EXTRAORDINARY SITUATIONS INVOLVING IMPLIED BIAS, STATE-COURT PROCEEDINGS RESULTING IN A FINDING OF "NO-BIAS" ARE BY DEFINITION INADEQUATE TO UNCOVER THE BIAS THAT THE LAW CONCLUSIVELY PRESUMES.

[FACT:] THE JURORS WERE INFECTED, PRE-TRIAL, WITH EXTRINSIC INFORMATION OF A SEVERE NATURE THAT INCLUDING: CAPITAL MURDER AND AGGRAVATED ROBBERY (SAME CHARGE AS PETITIONER WAS ON TRIAL FOR), FOREMAN OF THE JURY DID NOT INFORM THE COURT OF THIS - AND FINALLY DURING POST-TRIAL HEARING THE COURT DID NOT QUESTION ALL 12 (UNSWORN WITNESS) JUROR'S, IN:

DENNIS V. UNITED STATES 339 US AT 171-172, 94 L.ED. 734, 70 S. CT. 519 ("PRESERVATION OF THE OPPORTUNITY TO PROVE ACTUAL BIAS IS A GUARANTEE OF A DEFENDANT'S RIGHT TO AN IMPARTIAL JURY.");
UNITED STATES V. WOOD 299 US AT 150, 81 L.ED. 78, 57 S. CT.

177 ("COURTS SHOULD CONDUCT FULL INQUIRY INTO "ACTUAL BIAS" WHERE CIRCUMSTANCES SUGGEST THAT SUCH INQUIRY IS APPROPRIATE")

(C) IN LIGHT OF ALL OF THE ABOVE PETITIONER'S CONSTITUTIONAL RIGHTS WERE VIOLATED - (THERE WAS AN ABANDONMENT OF APPEAL FILED AND A POST-TRIAL HEARING HELD AS PROOF OF ALL OF THE ABOVE) - YET APPELLATE COUNSEL "SAT ON HIS HANDS"

THEREFORE, TRUINO V. THALER, AND MARTINEZ V. RYAN, Supra ALSO APPLIED IN THIS CAUSE YET THE LOWER COURTS RULED CONTRARY TO SUCH CLEARLY ESTABLISHED FEDERAL LAW.

(D) ON THE QUESTION OF DILIGENCE :

- Holmberg v. Armbricht 66 S. Ct. 582 ("BOTH BEFORE AND AFTER THE MERGER OF LAW AND EQUITY IN 1938, THIS COURT HAS CAUTIONED AGAINST INVOKING LACHES TO BAR LEGAL RELIEF.")

- MERCK & CO. V. REYNOLDS 130 S. Ct. 1784 (2010)

("TRADITIONALLY... STATUTES OF LIMITATION ARE NOT CONTROLLING MEASURES OF EQUITABLE RELIEF.")

[FACT:] IN 1990-1991 PETITIONER'S COURT APPOINTED APPELLATE ATTORNEY JOHN D. NATIONS (DALLAS, TX.) TOLD PETITIONER THAT THERE "WAS NO POST-TRIAL JUDGE'S TESTIMONY RECORDED SUFFICIENT TO SUBSTANTIATE PETITIONER'S CONSTITUTIONAL CLAIMS..." AND, IN 2016 WHEN PETITIONER OBTAINED COURT DOCUMENTS FROM 1989-90 VIA HIS FEDERAL PUBLIC DEFENDER (LAUREN ANITA WOODS DALLAS, TX.) - NAMELY AN "MOTION TO ABATE APPEAL" THAT PETITIONER LEARNED HIS APPELLATE ATTORNEY LIED TO HIM 28+ YRS. PRIOR - PETITIONER HAS DILIGENTLY PURSUED JUSTICE IN THIS CAUSE SUFFICIENT WITH "DISCOVERY RULES" OUTLINED IN THE ABOVE MERCK & CO V. REYNOLDS, Supra, (CLEARLY ESTABLISHED FEDERAL LAW).

- THAT NO COURT: STATE, FEDERAL, AND FIFTH CIRCUIT CALLED UPON THE TEXAS ATTORNEY GENERAL TO ANSWER TO ANY OF THE ABOVE; THE STATE TRIAL COURT RECORDS IN QUESTION WERE

NEVER ENTERED INTO THE OFFICIAL HABEAS AND APPELLATE RECORD WHICH IS THE SUBJECT OF THIS PETITION.

QUESTION: IS THERE A "LOOK-THROUGH" ERROR HERE?

• "A LOOK-THROUGH PRESUMPTION IS OFTEN (BUT NOT ALWAYS) MORE EFFICIENTLY APPLIED THAN A "CONTRARY TO" APPROACH - AN APPROACH, THAT WOULD REQUIRE A FEDERAL HABEAS COURT TO IMAGINE WHAT MIGHT HAVE BEEN THE STATE COURT'S SUPPORTIVE REASONING. THE LATER TASK MAY PROVE PARTICULARLY DIFFICULT WHERE THE ISSUE INVOLVES STATE LAW, SUCH AS THE STATE PROCEDURAL RULES THAT MAY CONSTRAIN THE SCOPE OF A REVIEWING COURT'S SUMMARY DECISION, A MATTER IN WHICH A FEDERAL JUDGE OFTEN LACKS COMPARATIVE EXPERTISE..."

WILSON V. SELLERS 138 S. CT. 1188 (2018)

QUESTION: DID THE FEDERAL COURT JUST "RUBBER-STAMP" A DENIAL BASED ON A STATE PROCEDURAL GROUND WHICH WAS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW WHEN THE SAME COURT COULD HAVE CALLED UP FOR THE STATE TRIAL COURT RECORD IN QUESTION TO "LOOK-THROUGH" AND SEE THE ACTUAL CONSTITUTIONAL VIOLATIONS INHERENT IN THIS CASE?

(E.) THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ERRED IN THEIR DENIALS OF THIS CAUSE, see Appendix

A.

• THE COURT DENIED PETITIONER A C.O.A. CITING, SLACK V. MCDANIEL 529 US 473, 484 (2000) STATING THAT I FAILED TO MAKE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT. PETITIONER AVERS THAT THE FIFTH CIRCUIT NEVER HAD THE PROPER INFORMATION SUFFICIENT TO ARRIVE AT SUCH A DETERMINATION AS ABOVE PREMISES CONSIDERED WILL ATTEST TO.

QUESTION: HOW DOES A PRO-SE LITIGANT (WHO DISCOVERS AFTER 28 YRS. THAT HIS APPELATE ATTORNEY LIED TO HIM) ENSURE THAT THE FEDERAL COURTS WHO WILL CONSIDER THE DECISIONS OF SLACK V. McDANIEL, SUPRA, HAVE BEEN ABLE TO REVIEW THE ENTIRE COURT RECORD - THAT IF REVIEWED WOULD BE SUFFICIENT TO SHOW " . . . THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING " SLACK 529 US AT 484. WHEN NO ONE HAS CALLED UPON THE TEXAS ATTORNEY GENERAL'S OFFICE TO INCLUDE INTO THE HABEAS AND SUBSEQUENT APPELLANT RECORD THE ENTIRE TRIAL RECORD IN QUESTION THAT WILL SUBSTANTIATE ALL OF PETITIONER'S CONSTITUTIONAL CLAIMS ?

- PETITIONER ASSERTS THAT HE RAISED "LEGAL POINTS" ARGUABLE ON THEIR MERITS (AND THEREFORE NOT FRIVOLOUS) SUFFICIENT TO REQUIRE THAT THE FIFTH CIRCUIT GRANT HIS C.O.A. AND IN FORMA PAUPERIS REQUESTS CARSON V. POLLEY 689 F. 2d. 562, 586, (5TH CIR. 1982)

QUESTION: DID THE FIFTH CIRCUIT ERR IN THEIR DENIAL OF PETITIONER'S REQUEST FOR POST JUDGMENT RELIEF (MOTION PURSUANT TO FED. R. CIV. PROC. RULE 60 (b) MOTION) IN CITING HERNANDEZ V. THALER 630 F. 3d. 420, 428 (5TH CIR. 2011), IN LIGHT OF THE FOLLOWING:

- WHERE THE UNDERLYING QUESTION DEALT WITH " DID PETITIONER MAKE THE REQUISITE SHOWING THAT

REASONABLE JURISTS COULD DEBATE WHETHER THE DISTRICT COURT'S DENIAL OF HIS REQUEST FOR POSTJUDGMENT RELIEF WAS AN ABUSE OF DISCRETION."

QUESTION: WAS THE INFORMATION (RECORD) USED BY THE FIFTH CIRCUIT SUFFICIENT TO ARRIVE AT SUCH A HARSH DECISION IN LIGHT OF ALL OF THE ABOVE?

- PETITIONER OFFERS THESE AUTHORITIES TO CONSIDER:

SEVEN ELVES INC. V. ESKENAZI INC., 635 F.2d. 396 (1981

U.S. App. LEXIS 20700) ("A 60(b) MOTION IS A GRAND RESERVOIR OF EQUITABLE POWER TO DO JUSTICE IN A PARTICULAR CASE,"

• WAS THE DISTRICT COURT'S REFUSAL TO TAP INTO THAT RESERVOIR IN THIS PRESENT CASE SO UNWARRANTED TO JUSTIFY ITS DETERMINATION?")

QUESTION: DID THE DISTRICT COURT AND SUBSEQUENT FIFTH CIRCUIT FAIL TO GIVE PROPER CONSIDERATION OF PETITIONORS C.O.A., IN FORMA PAUPERIS, AND POSTJUDGMENT RELIEF REQUESTS IN LIGHT OF NEVER VIEWING THE STATE REAL RECORD THAT WOULD HAVE ALLOWED THE GRANTING OF ALL OF THE ABOVE?

BUCK V. DAVIS 137 S. Ct. 764, 197 L. ED. 2d. 1, (2017 US

LEXIS 1429): BUCK RECEIVED RELIEF FROM THIS COURT AFTER MORE THAN 25 YRS. OF LITIGATION WHICH INCLUDED PROCEDURAL BAR ISSUES, AND RULE 60(b) DENIALS FROM THE 5TH CIRCUIT AND THIS COURT FINALLY FOUND THAT BUCK HAD:

- DEMONSTRATED PREJUDICE (JURY) FOR SIXTH AMENDMENT PURPOSES, AND
- DENYING HIS FED. R. CIV. PROC. 60(b)(6) MOTION WAS ERROR, WHERE IT APPEARED JURY PREJUDICE MAY HAVE RESULTED IN HIS SENTENCE.

PETITIONER AVERS THE SAME ELEMENTS ARE CONSISTENT IN THIS CAUSE.

PETITIONER FURTHER STATES THAT NOT ONLY TREVENO V. THALER AND MARTINEZ V. RYAN, SUPRA APPLY TO ALLOW A Rule 60(b) MOTION TO BE HEARD BY THE FIFTH CIRCUIT, BUT WHEN COUPLED WITH HOLLAND V. FLORIDA, SUPRA WHERE PETITIONER'S ATTORNEY ON APPEAL LIED TO HIM - THAT THE COUPLING OF THE THREE WOULD HAVE ALLOWED THE FIFTH CIRCUIT TO GET TO THE MERITS OF HIS 60(b), C.O.A., AND IN FORMA PAUPERIS REQUESTS.

CONCLUSION

IT IS FOR ALL OF THE ABOVE THAT PETITIONER STATES THAT THIS WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED:

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