ORIGINAL

No. 19-5305

FILED
JUN 20 2019
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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

SHERMAN ALEXANDER LYNCH, Petitioner

v.

SHANE NELSON, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, CASE NO. 18-4174

Sherman A. Lynch
OFN 64063
Central Utah Correctional Facility
P.O. Box 550
Gunnison, Utah 84634-0550
Petitioner, Pro se

Petitioner is incarcerated and pro se without access to a law library or adequate legal assistance.

QUESTIONS PRESENTED

First Question: Whether the District Court erred when it held Lynch was not entitled to the "fundamental miscarriage of justice" exception under the *Carrier* standard[1] was contrary to holdings established by the Supreme Court in *Schlup v. Delo*, 513 U.S. 278, 321, 324, 327-328, 331-332 (1975)?

Second Question: Whether the District Court erred when it did not hold that Lynch's constitutional-*Brady*-error[2] claims, raised in initial-review collateral proceedings in a Utah State court "where there was no counsel" for Lynch, that were procedurally defaulted was contrary to holdings established by the Supreme Court in *Martinez v. Ryan*, 566 U.S. 1, 17 (2012)?

Third Question: Whether the District Court erred when it made six (6) false statements of fact to deny Lynch the "fundamental miscarriage of justice" exception under the *Carrier* standard was contrary to the holdings established by the Supreme Court that "[d]ue process guarantees that fundamental fairness essential to the very concept of justice," *Lisenba v. CA*, 314 U.S. 219, 236 (1941)?

Fourth Question: Whether the District Court erred when it made a conclusion of law for summary judgment on the credibility of new evidence not presented at trial without an evidentiary hearing was contrary to holdings established by the Supreme Court in *Schlup*, supra, at 332?

Fifth Question: Whether the District Court erred when it failed to address allegations of eleven (11) false statements of fact or law as fraud on the court in Respondent/Appellee's Motion to Dismiss Petition for Writ of Habeas Corpus was contrary to holdings established by the Supreme Court in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 332 U.S. 238, 246 (1944) (it "is a wrong against the

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[1] *Murray v. Carrier*, 477 U.S. 478, 496 (1986) ("We think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default") (emphasis added).

[2] *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (where prosecutors unconstitutionally withheld exculpatory evidence from the defense).

institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated")?

Sixth Question: Whether the District Court erred when it denied Lynch's three (3) requests for appointed counsel was contrary to the holdings established by the Supreme Court in *Bounds v. Smith*, 450 U.S. 817, 822 (1977) ('counsel musts be appointed to give indigent inmates a "meaningful appeal" from their convictions') (emphasis added)?

Seventh Question: Whether the District Court erred when it denied Lynch's request for the prison to provide a Law Library or an adequate Legal Assistance Program to inmates was contrary to holdings established by the Supreme Court in *Lewis v. Casey*, 518 U.S. 343, 351 (1996) ('prison law libraries and legal assistance programs are the means for ensuring "a reasonably adequate opportunity to present claims for violations of fundamental constitutional rights to the courts." [*Bounds*, 430 U.S.], at 825')?

Eighth Question: Whether the District Court erred when it denied Lynch's Constitutional right of access to the courts by not granting Lynch's request for an order to not transfer Lynch to other correctional facilities was contrary to holdings established by the Supreme Court in *Bounds*, 430 U.S., at 821 ("It is established beyond doubt that prisoners have a constitutional right of access to the courts").

Ninth Question: Whether the District Court erred when it denied Lynch's constitutional right of access to the courts by not granting Lynch's request for an order to allow Lynch to purchase computer was contrary to holdings established by the Supreme Court in *Bounds*, supra?

Tenth Question: Whether the Court of Appeals erred when, after being Briefed on the Federal issues of the case with citations to facts in the record and relevant legal authorities, it denied Lynch's Application for Certificate of Appealability, ("COA"), without considering claims of violations of Federal rights raised in Lynch's Brief that is reviewable under *Chambers v. Baltimore & O.R. Co.*, 207 U.S. 142, 148 (1907) ("the Federal question was assumed to be in issue, was decided against the claim of Federal right, and the decision of the question was

essential to the judgment rendered. This is enough to give this Court the authority to re-examine that question on writ of error")?

LIST OF PARTIES

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CONSTITUTIONAL PROVISIONS

IN THE

SUPREME COURT OF THE UNITED STATES

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

OPINIONS BELOW

For cases for federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals, ("Court of Appeals"), denied Lynch's Application for Certificate of Appealability, ("Request for COA"), was February 21, 2019, and a copy of the order denying the Request for COA appears at Appendix. A. A Petition for Rehearing was denied by the Court of Appeals on March 25, 2019, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Article III. (relevant portions)

> Section 1. The judicial power of the United States, shall be vested in one supreme court." And in such inferior courts as the Congress may from time to time ordain and establish.
>
> Section 2. The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

U.S. Constitution, Amendment V. (relevant portion)

No person shall be ... deprived of life, liberty, or property, without due process of law.

U.S. Constitution, Amendment VI.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Constitution, Amendment XIV. (relevant portions)

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state herein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LESS STRINGENT STANDARD

Lynch is a pro se litigant where 'the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972), a pro se complaint, "however artfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id., at 520-521, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).' *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Emphasis added.

STATEMENT OF THE CASE

I. Nature of the Case:

On November 14, 2008, Lynch was convicted at trial of homicide for the death of his wife, Patricia Rothermich, and obstruction of justice in the Third District Court, State of Utah, Case No. 071907498, and subsequently sentenced to 16-years-to-life and 1-to-15 years consecutively. After the direct appeal was denied, Lynch filed an Amended Petition for Relief under the Post-Conviction Relief Act, ("PCRA"), on the ground of constitutional-*Strickland*-error[1] at trial with the assistance of

[1] *Strickland v. Washington*, 46 U.S. 668, 687 (1984) (ineffective assistance of counsel).

counsel, Case No. 110913691. The State filed a Motion for Summary Judgment on procedural grounds and on the merits, which the State District Court granted on January 6, 2014. With counsel, Lynch appealed the decision to the Utah Court of Appeals, which was denied. See *Lynch v. State*, 400 P.3d 1047 (UT App. 2017). In January 2015, Lynch filed with the state District Court a PCRA Petition on constitutional-*Brady*-error[2] at trial, Case No. 150900245, and a PCRA Petition for Actual Innocence, Case No. 150900286. The State filed Motions for Summary Judgment against both PCRA Petitions on procedural grounds, which the Court granted in March 2016. Lynch filed a timely appeal, which the Utah Court of Appeals summarily dismissed the appeals, Case Nos. 20160234-CA and 0216035-CA. Lynch filed timely Petitions for Writ of Certiorari with the Utah Supreme Court, which were denied, Case Nos. 20160851SC and 20160852-SC.

II. Course of Proceedings:

Having exhausted all appellate procedures in the Utah courts, on May 25, 2017, Lynch filed a Petition for Writ of Habeas Corpus, ("Habeas Petition"), under 28 U.S.C. §2254 on grounds of constitutional errors at trial under *Brady*, 373 U.S., at 87, and *Strickland*, 466 U.S., at 687, and actual innocence under *Schlup*, 513 U.S., at 321-322, 324, 327-328, 331-332, requesting a "fundamental miscarriage of justice" exception under the *Carrier*[3] standard, DC Doc. No. 1,[4] and Lynch filed a Motion for Appointed Counsel, ("first Motion for Counsel"), as a constitutional right for access to the courts under *Bounds v. Smith*, 430 U.S. 817 (1977). DC Doc. No. 2. On January 11, 2018, the District Court ordered Respondent to answer the Habeas Petition and denied Lynch's first Motion for Counsel. DC Doc. No. 14. On March 22, 2018, Lynch filed a Motion for Relief from Order Denying Appointed Counsel, ("second Motion for Counsel"). DC Doc. No. 18. On March 27, 2018, Lynch filed a

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[2] *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (where prosecutors unconstitutionally withheld exculpatory evidence from the defense).

[3] *Murray v. Carrier*, 477 U.S. 478, 496 (1986) ("We think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default") (emphasis added).

[4] District Court Document Numbers reference as "DC Doc. No.".

Motion to Order Respondent Not to Transfer Lynch to Other Facilities, ("Motion Not to Transfer"), DC Doc. No. 19. On April 19, 2018, Lynch filed a Motion to Order Respondent to Contract with Lynch for Purchase of a Computer, ("Motion to Purchase Computer"), DC Doc. No. 24. On May 23, 2018, Respondent filed a Motion to Dismiss Petition for Writ of Habeas Corpus, ("Motion to Dismiss"). DC Doc. No. 31. On June 28, 2018, Lynch filed a Motion to Appoint Counsel to Assist With Objection to Motion to Dismiss Petition for Writ of Habeas Corpus, ("third Motion for Counsel"). DC Doc. No. 36. On August 30, 2018, the District Court denied Lynch's second and third Motions for Counsel, Motion Not to Transfer, and Motion to Purchase Computer. DC Doc. No. 40. On September 4, 2018, Lynch filed an Objection to Motion to Dismiss Petition for Writ of Habeas Corpus, ("Objection"). DC Doc. No. 41. On November 15, 2018, Lynch filed a Motion to Order Respondent to Provide Law Library or Legal Assistance, ("Motion for Law Library"). DC Doc. No. 58. On November 21, 2018, the District Court filed its Order Granting Motion to Dismiss Habeas Corpus Petition that also denied the Motion for Law Library. App. B. On December 10, 2018, Lynch filed a Notice of Appeal. DC Doc. No. 66. Notice of Appeal was timely.

Subsequent to the Notice of Appeal, the Court of Appeals ordered Lynch to file an Appellant's Combined Opening Brief and Application for a Certificate of Appealability,[5] which Lynch mailed on January 28, 2019. On February 19, 2019, the Court of Appeals denied Lynch's request for COA and dismissed his appeal. See App. A. On February 26, 2019, Lynch mailed a Request for Extension of Time to file a Petition for Rehearing of Order Denying COA from March 5, 2019 to April 4, 2019. On March 14, 2019, Lynch mailed a Motion to Submit Out of Time Petition for Rehearing of Order Denying COA.[6] On March 25, 2019, the Court of Appeals

[5] Lynch requested a copy of the Docketing Statement and all pleadings and documents for this case from the Clerk of the Court of Appeals. To date, Lynch has not received the copies.

[6] "A paper filed by an inmate confined in an institution is timely if deposited in the institution's mail system on or before the last day for filing." 10th Cir. R. 25(a)(2)(C).

denied the Petition for Rehearing. See App. C. This Petition for Writ of Certiorari is timely.

I. Statement of the Facts.

Article III, Section 1, of the U.S. Constitution states: "The judicial power of the United States, shall be vested in one Supreme Court, and such inferior Courts as the Congress may from time to time ordain and establish," and Section 2 states: "The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, [or] laws of the United States." The Supreme Court has established that "once the Court has spoken, it is the duty of other courts to request that understanding of the governing rule of law." *Bousley v. U.S.*, 523 U.S. 614, 625-626 (1998). Emphasis added. The word 'contrary' is commonly understood to mean 'diametrically different,' 'opposite in character or nature,' or 'mutually opposed.' *Bell v. Cone*, 535 U.S. 685, 698 (2002), citing *Williams v. Taylor*, 529 U.S. 362, 405 (2002). "Clearly established law is determined by the Supreme Court of the United States." Id., at 412. Emphasis added.

A. Due Process of Law:

Under the Fifth and Fourteenth Amendment Due Process Clause, the Supreme Court established 'due process guarantees that a [petitioner] will be treated with "that fundamental fairness essential to the very concept of justice."' *U.S. v. Valenzuela-Bernal*, 458 U.S. 858, 872 (1982), citing *Lisenba v. CA*, 314 U.S. 219, 236 (1941). Emphasis added. 'Formulation of this right [to a fair trial], and imposition of this duty, are "the essence of due process of law."' *U.S. v. Bagley*, 473 U.S. 667, 695-696 (1985), citing *Moore v. IL*, 408 U.S. 786, 809-810 (1972). Emphasis added. "The requirement of due process of law in judicial procedure [requires] every procedure which might lead [a judge] not to hold the balance nice, clear and true between the State and the [petitioner] denies the latter of due process of law." *Tumey v. OH*, 273 U.S. 519, 532 (1927). Emphasis added. "A fair tribunal is a basic requirement of due process [where] our system of law has always endeavored to prevent the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136 (1955). Emphasis added. In other words, the Supreme Court has

established the rule of law that the Fifth and Fourteenth Amendment Due Process Clause guarantees habeas corpus proceedings must be in a fair tribunal where the judge has a duty to hold the balance nice, clear and true to prevent the probability of unfairness, or the habeas petitioner is denied due process of law.

In this case, the District Court rendered judgments that violated Lynch's constitutional right to due process of law by: (1) holding Lynch was not entitled to the "fundamental miscarriage of justice" exception under the *Carrier* standard contrary to established law in *Schlup*, 513 U.S., at 321, 324, 327-328, 331-332; (2) holding Lynch's constitutional-*Brady*-errors were procedurally defaulted contrary to established law in *Martinez v. Ryan*, 566 U.S., 1, 17 (2012); (3) making false statements to deny Lynch's actual-innocence claims contrary to established law in *Lisenba*, 314 U.S., at 236; (4) holding a conclusion of law for summary judgment on the credibility of new evidence presented contrary to established law in *Schlup*, 513 U.S., at 332; and (5) failing to address allegations of false statements in the Motion to Dismiss contrary to established law in *Hazel-Atlas*, 332 U.S., at 246. Also, the Court of Appeals rendered an Order denying a COA that violated Lynch's constitutional right to due process of law by not addressing the claimed violations of Federal rights raised in Lynch's Brief contrary to established law in *Chambers*, 207 U.S., at 148.

B. Access to the Courts:

Under the Fourteenth Amendment Equal Protection Clause, the Supreme Court held: "It is established beyond doubt that prisoners have a constitutional right to access to the courts." *Bounds*, 430 U.S., at 821. The District Court rendered Orders that violated Lynch's constitutional right of access to the Court by denying Lynch: (1) appointed counsel contrary to established law in *Bounds*, 430 U.S., at 823, 828; (2) an adequate law library or legal assistance contrary to established law in *Lewis*, 518 U.S., at 351; and (3) a remedy to prison officials' interference with presentation of claims to the Court contrary to established law in *Lewis*, 518 U.S., at 349-350. Also, the Court of Appeals denied Lynch's constitutional right of access to the Court by procedurally denying Lynch

reasonable time to file a Petition for Rehearing of Order Denying COA contrary to established law in *Bounds*, 430 U.S., at 821.

REASONS FOR GRANTING THE PETITION

I. District Court's Order Denying "Fundamental Miscarriage of Justice" Exception Was Contrary To Established Law.

In *Schlup*, the Supreme Court established four criteria the habeas petition must meet to be entitled to a "fundamental miscarriage of justice" exception under the *Carrier* standard: (1) "this Court explicitly tied the miscarriage of justice exception to the petitioner's innocence," *Schlup*, 513 U.S., at 321; (2) "when the claimed injustice that constitutional error has resulted in the conviction of one who is actually innocent of the crime," id., at 324; (3) "to be credible, such a claim requires petitioner to support his allegation of constitutional error with new reliable evidence ... that was not presented at trial," id., and (4) "the application of the *Carrier* standard arises in the context of a request for an evidentiary hearing," id., at 331.

Lynch's eleven claims of actual innocence, DC Doc. No. 1, at pp 92-104, met the first criteria for the *Carrier* standard under *Schlup*. Lynch's eleven constitutional-*Brady*-error claims, DC Doc. No. 1, at pp 59-79, and his four constitutional-*Strickland*-error claims, id., at pp 80-92, met the second criteria for the *Carrier* standard under *Schlup*. Lynch supported each constitutional-error and actual-innocence claim with new reliable evidence that was not presented at trial, DC Doc. No. 1, at pp 59-104, met the third criteria for the *Carrier* standard under *Schlup*. And, Lynch requested an evidentiary hearing, DC Doc. No. 1, at p 109, met the fourth criteria for the *Carrier* standard under *Schlup*. Also, the District court stated: 'procedurally defaulted claims may be reviewed only if "the petitioner can demonstrate cause and prejudice or a fundamental miscarriage of justice." *Thomas v. Gibson*, 218 F.3d 1213, 1221 (10th Cir. 2000)'. DC Doc. No. 59, at p 4. Emphasis added. Thereby, the District Court and this Court of Appeals agree with the Supreme Court that a "fundamental miscarriage of justice" exception applies to

Lynch's Habeas petition as Lynch has shown it met the four criteria for this exception for the *Carrier* standard under *Schlup*.

II. District Court's Failure To Apply *Martinez* Exception To Procedural Default Was Contrary To Established Law.

In *Martinez v. Ryan*, the Supreme Court established:

> "Where, under state law, claims of [constitutional-error] must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of [constitutional-error] at trial if, in the initial-review collateral proceeding, there was no counsel."

Id., 566 U.S., at 17. See *Trevino v. Thaler*, 133 S.Ct., 1911, 1912, 1921 (2013) (citing *Martinez*, 566 U.S., at 17); *Ayestas v. Davis*, 138 S.Ct., 1080, 1083, 1096 (2018) (same). As "Lynch filed pro se a PCRA Petition with the [Utah] District Court for constitutional error at trial citing 18 claims of prosecutorial misconduct by withholding exculpatory and impeachment evidence from Lynch," DC Doc. No. 1, at p 47, then a procedural default would not bar the District Court from hearing Lynch's claims of substantial constitutional-*Brady*-error at trial. Id., at pp 59-79. The District Court's failure to apply this well-established exception by the Supreme Court for procedural default to Lynch's constitutional-*Brady*-error claims violated Lynch's Constitutional right to due process of law under the Fifth and Fourteenth Amendment Due Process Clause contrary to established law in *Martinez*, 566 U.S., at 17, that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

III. District Court's False Statements Were Contrary To Established Law.

The District Court stated as fact that Lynch's "evidence presented in [claims] 1, 3, 7, 8, 9 and 10 is not new, but was presented and considered at trial." App. B, at p 5. Emphasis added. This statement of fact is false for the following reasons:

Claim 1: "Testimony and exhibit evidence on the Victim's pants." Id. Lynch presented new reliable evidence not presented at trial that the "exhibit evidence on the Victim's pants" was manufactured by the prosecution, see DC Doc. No. 1, at pp 59-61, which is evidence not presented and considered at trial.

Claim 3: "Location of the Victim's back injuries." App. B, at p 5. Lynch presented new reliable evidence not presented at trial that the location of the fatal back injury that severed the Victim's spinal cord was at 49.2 inches and too high to align with 37.25-inch height of the hood on Lynch's truck, see DC Doc. No. 1, at pp 68-70, which is evidence not presented and considered at trial.

Claim 7: "Evidence that potential witness Maxwell saw a red truck in the area of the accident." App. B, at p 5. Lynch presented new reliable evidence not presented at trial that Maxwell heard and saw a large red industrial truck, versus Lynch's white pickup truck, at the scene of the collision at the moment of the collision, see DC Doc. No. 1, at pp 98-99, which is evidence not presented and considered at trial.

Claim 8: "Evidence that a potential witness overheard a conversation about a hit and run." App. B, at p 5. Lynch presented new reliable evidence not presented at trial that Michele Ashe told Det. Adamson she overheard one man confessing to another man that he had accidently hit and killed a woman in Hollady, Utah, the location of where the Victim was killed, and gave a description of the man confessing, who looked nothing like Lynch, see DC Doc. No. 1, at pp 100-101, which is evidence not presented and considered at trial.

Claim 9: "Testimony that the DNA evidence on the truck did not match the Victim." App. B, at p 5. Lynch presented new reliable evidence not presented at trial that 'Barbara Reed, the Crime Lab photographer, described the Victim's pants as "bloody." Also, photographs taken by the M.E. of the Victim's left and right calves show they both had significant open wounds.' DC Doc. No. 1, at p 101. This is new evidence that the impact vehicle would certainly have blood or tissue from the Victim transferred to it from the collision, and after twice swabbing Lynch's truck for DNA samples, see id., at pp 16-17, 17-18, then this is new reliable evidence Lynch's truck was not the impact vehicle, which is evidence not presented and considered at trial.

Claim 10: "Evidence about paint and paint analysis." App. B, at p 5, Lynch presented new reliable evidence not presented at trial that the white paint tested

from the pants tested at the State Crime Lab showed inconsistencies with the white paint sample taken from the hood on Lynch's truck and was not from Lynch's truck. See DC Doc. No. 1, at pp 102-103. Also, Lynch presented new reliable evidence not presented at trial that the "evidence about paint and paint analysis" was manufactured by the prosecution. See id., at pp 59-61, 92-94. Thereby, this is "evidence about paint and paint analysis" that was not presented and considered at trial, that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

As the District Court's Order made false statements of fact to support its judgment to dismiss these actual innocence claims, then the Order violated Lynch's constitutional right to due process of law under the Fifth and Fourteen Amendment Due Process Clause and is contrary to established law in *Tumey*, 273 U.S., at 532. ("The requirement of due process of law in judicial procedure [requires a judge] to hold the balance nice, clear and true between the State and the [petitioner, or it] denies the latter of due process of law").

IV. District Court's Conclusion Of Law For Summary Judgment Was Contrary To Established Law.

Schlup established:

> 'The court is not [ ] to test the new evidence by a standard appropriate for deciding a motion for summary judgment. Cf. *Agosto v. I.N.S.*, 436 U.S. 748, 756 (1978) ("[A] district court generally cannot grant summary judgment based on 'its assessment of the credibility of the evidence presented"); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) ("At the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial"). Instead, the Court may consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence.'

Id., 513 U.S., at 332.

In regard to Lynch's actual-innocence claims 2, 4, 5 and 6, the District Court agrees that these claims "involve evidence ... which were not presented during the trial." App. B, at p 6. But then the District Court concluded 'this new evidence

alone is insufficient to determine that "it is more likely than not that no reasonable juror would have convicted [Lynch] in light of [this] new evidence." *Calderon [v. Thompson,* 523 U.S. 538, 559 (1998)] (emphasis added).' Id. Emphasis added. 'The habeas court must make its determination concerning the petitioner's innocence "in light of all the evidence."' *Schlup,* 513 U.S., at 328. As the District Court cannot assess the credibility of Lynch's new evidence at this stage of the habeas proceeding and the District Court must make its determination of the new evidence presented in light of *all the evidence*, then the District Court's Order dismissing Lynch's actual-innocence claims 2, 4, 5 and 6, because it has determined the *new evidence presented in these claims alone is insufficient*, then the Order violates Lynch's constitutional right to due process of law under the Fifth and Fourteenth Amendment Due process Clause and contrary to established law in *Lisenba,* 314 U.S., at 236 ('due process guarantees that a [petitioner] will be treated with "that fundamental fairness essential to the very concept of justice"'), that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

V. District Court's Failure To Address Allegations Of Eleven False Statements In Motion to Dismiss Was Contrary to Established Law.

On May 23, 2018, Respondent filed a Motion to Dismiss, DC Doc. No. 31. On September 4, 2018, Lynch filed an Objection to Motion to Dismiss, DC Doc. No. 41, alleging Respondent made eleven false statements of fact or law. Lynch showed with facts in the court record or relevant legal authority Respondent's statements were false on the following issues: (1) Respondent misrepresented *Coleman v. Thompson,* 501 U.S. 722, 729-732, 735 n. 1 (1991) as a relevant authority to procedurally default Lynch's constitutional-*Brady*-error claims, see DC Doc. No. 41, at pp 64-65; (2) Respondent misrepresented *Coleman,* supra, as a relevant authority to procedurally default Lynch's constitutional-*Strickland*-error claims, see id., at pp 66-67; (3) Respondent made a false statement to support his allegation there was a tow hook on the front of Lynch's truck, see id., at pp 68-69; (4) Respondent made a false statement to support his allegation Lynch had not shown any apparent conflict

between the Victim's injuries and truck's grill, see id., at p 69; (5) Respondent made a false statement that defense counsel elicited an admission that Det. Adamson never had the substance on the zip tie tested on cross-examination, see id., at p 75; (6) Respondent made a false statement to support his allegation Det. Adamson admitted nothing in the paint analyst's report matched the white substance on the zip tie to paint on Lynch's truck, see id., at pp 75-76; (7) Respondent made a false statement Lynch had not shown prejudice in his *Strickland* claim that defense counsel failed to present Maxwell as a witness, see id., at p 82; (8) Respondent made a false statement Lynch had not said what Maxwell would have testified to at trial, see id., at p 83; (9) Respondent made a false statement Lynch had to explain how testimony could have created reasonable likelihood on appeal, see id., (10) Respondent made a false statement there is no prejudice to accumulate Lynch's constitutional-error claims, see id., at p 88; and (11) Respondent made a false statement that free-standing claims of innocence are not cognizable, see id., at pp 88-91.

As the District Court's Order failed to address Respondent's eleven false statements made to support his Motion to Dismiss, then the Order violated Lynch's constitutional right to due process of law under the Fifth and Fourteenth Amendment Due Process Clause and contrary to established law in *Hazel-Atlas,* 332 U.S., at 246 (it "is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated")[7], that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

VI. District Court's Denial Of Appointed Counsel Was Contrary to Established Law.

Lynch filed his first Motion for Counsel, DC Doc. No. 2, as a constitutional right to access to the courts under the Fourteenth Amendment Equal Protection

[7] See also i.d., at 245 ("Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments") (emphasis added); *S & E Contractors, Inc. v. U.S.*, 406 4.S 1, 15 (1972) ("fraud on ... the court enforcing the action is ground for setting aside the judgment").

Clause established by the Supreme Court, citing *Bounds*, 430 U.S., at 825, as a relevant authority because the Utah prisons were lacking the "most minimal legal research materials" and that "the legal services provided to assist the prisoner are grossly inadequate," citing *Adams*, 123 P.3d, at 406 (Utah 2005), as relevant authority.[8]

"The Court notes that Petitioner has no constitutional right to appointed pro bono counsel in [this] habeas corpus case," citing as its seemingly relevant authority *United States v. Lewis*, No. 97-3135-SAC, 91-0047-01-SAC, 1998 WL 105477, at 3 (D. Kan. December 9, 1998). DC Doc. No. 14, at p 1. ("There is no constitutional right to appointment of counsel in a §2255 proceeding. See *United States v. Vasquez*, 7 F.3d 81, 83 (5th Cir. 1993)"). *Vasquez* stated: "No such right [of appointed counsel] flows from the Constitution. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (No Sixth Amendment right to appointed counsel extends to prisoners collaterally attacking their convictions)." Id., 7 F.3d, at 83. However, *Finley* held "the underlying constitutional right to appointed counsel [in Federal habeas corpus proceedings was] established in *Douglas v. California*, 372 U.S. 353 (1963)." Id., 481 U.S., at 555.

In other words, while an indigent habeas corpus petitioner has no constitutional right to counsel under the Sixth Amendment, he does have a constitutional right to appointed counsel under the Fourteenth Amendment Equal Protection Clause for access to the courts. The District Court's analysis of constitutional law on this issue was based on an obscure irrelevant authority that was "not reported in F. Supp. 2d (1998)," see *Lewis*, 1998 WL 1054227, that is contrary to established law that 'counsel must be appointed to give indigent inmates "a meaningful appeal" from their convictions,' *Bounds*, 450 U.S., at 822, that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

[8] "In Utah, most minimal legal research materials are lacking at the prison, and the legal services provided to assist prisoners are grossly inadequate," *Adam v. State*, 123 P.3d 400, 406 (Utah 2005).

VII. District Court's Denial Of Motion For Law Library Was Contrary to Established Law.

After the District Court denied all three (3) of Lynch's Motions for Appointed Counsel, DC Doc. Nos. 14, 40, Lynch filed a Motion for Law Library, DC Doc. No. 58. The District Court denied the Motion because "a legal-access claim such as the one Petitioner suggests is not appropriate in this habeas corpus case but would be more properly addressed in a civil right complaint regarding conditions of confinement." App. B, at p 16.

Though *Bounds,* 430 U.S., at 828, and *Lewis,* 518 U.S., at 346 were the result of class action civil rights suits, Lynch is unaware of any caselaw or statute that a civil suit to order prison authorities to provide inmates with a law library or legal assistance program must be separate from a 28 U.S.C. §2254 civil suit. In fact, it would be during the proceedings of a 28 U.S.C. §2254 civil suit that the need would manifest itself for a habeas corpus petition file for an injunction with the habeas court for the Constitutional right of access to a law library or legal assistance program for meaningful legal papers to be filed with the courts under the Fourteenth Amendment Equal Protection Clause, and not in another civil suit after the habeas corpus petitioner has had his habeas corpus petition dismissed, which is now the case for Lynch.

As the District Court's denial of Lynch's Motion for Law Library has caused injury to Lynch due to the District Court's wrongful dismissal of Lynch's Habeas Petition, which more likely than not would not have occurred if Lynch had had access to a law library or legal assistance program to enable Lynch to file meaningful legal papers with the District Court, and as the District Court denied Lynch's Motion for Law Library without citation to any relevant legal authority, and as the District Court's denial of Lynch's Motion for Law Library was contrary to established law in *Bounds,* 430 U.S., at 821-823, 825-826, 828; *Lewis,* 518 U.S., at 349-351,

> ('It is the role of the courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer actual

> harm. ... It is for the courts to remedy past or imminent official interference with individual inmate's presentation of claims to the courts. ... In other words, prison law libraries and legal assistance programs are not the ends in themselves, but only the means for ensuring "a reasonably adequate opportunity to present claims violations of fundamental constitutional rights to the courts." [*Bounds*, 430 U.S.], at 825'),

then the District Court's denial of Lynch's Motion for a Law Library was contrary to established law that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

VIII. District Court's Denial Of Motion Not To Transfer Lynch Was Contrary to Established Law.

Lynch was incarcerated in the Utah State Prison ("USP"), Draper, Utah on January 29, 2009. Within the year following the filing of his Habeas Corpus Petition on May 25, 2017, DC Doc. No. 1, prison officials had transferred Lynch three (3) times between USP, Draper and the Central Utah Correctional Facility ("CUCF"), Gunnison, Utah. See DC Doc. Nos. 8, 10, 26. During the process of each transfer, Lynch was separated from the legal materials he needed for access to the courts for up to three (3) weeks. As Lynch is a pro se litigant in his habeas case, the separation from these legal materials by prison officials violated Lynch's constitutional right to access to the District Court under the Fourteenth Amendment Equal Protection Clause as established by the Supreme Court's decision in *Bounds*, 430 U.S., at 821 ("It is established beyond doubt that prisoners have a constitutional right to access to the courts"). The Supreme Court has also established under *Lewis*, 518 U.S., at 349-350 ("[I]t is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer actional harm. ... It is for the courts to remedy past or imminent official interference with individual inmates' presentation of claims to the courts." In an effort to prevent further violations by prison official's interference with this constitutional right to access to the District Court, Lynch filed his Motion Not to Transfer Lynch, DC Doc. No. 19, citing as relevant authority *Bounds*, supra, and

Lewis, supra. The District Court's August 30, 2018 interlocutory Order denied said Motion because "the Court has been liberal in granting time extensions for petitioner and sees no need to impose an injunction on Respondent." DC Doc. No. 40, at p 1. This bandaid remedy does not cover any future time when Lynch is transferred to another Utah prison facility, separating Lynch from his needed legal materials for weeks at a time, which could cause Lynch not to be able to file a timely motion for extension of time that would be procedurally barred by the District Court, which would result in prejudice to Lynch due to loss of a critical legal issue by default for the Lynch and his habeas case.

As the District Court had a duty and the judicial authority to remedy the imminent suffering of actual harm by the Prison's official interference with his constitutional right to access to the courts, then the District Court's denial of Lynch's Motion Not to Transfer was contrary to established law in *Lewis,* 518 U.S., at 349-350, cited above, that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

IX. District Court's Denial Of Motion To Purchase Computer Was Contrary To Established Law.

Previously, when Lynch requested documentation with assistance of counsel from Utah State agencies involved in collecting, analyzing or processing of evidence for the crimes which Lynch was convicted, the agencies had provided the documentation in the format it was stored, to wit, digitally on CD-Rs. As Lynch was then represented by counsel, then accessing digitally stored documents was not an issue because counsel could provide copies as printed documents. And, as the USP, Draper had provided access to a laptop computer for inmates to view digitally stored documents, then it was not an issue for pro se incarcerated litigants to have documents provided digitally. However, on March 19, 2018, Captain Crane, the officer with overall responsibility for the facility Lynch was housed at that time, informed him that the Warden had withdrawn the privilege for inmate access to these laptop computers due to security issues dealing with unauthorized use of CR-Rs, flash drives, and thumb drives by some inmates. See DC Doc. No. 24, at p 3.

'It is now established beyond doubt that prisoners have a constitutional right of access to the courts ... to give indigent inmates "a meaningful appeal" from their convictions. *Douglas v. California,* 322 U.S. 353, 358 (1963).' *Bounds,* 430 U.S., at 821-822. "Moreover, our decisions have consequently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts." Id., at 824. And, "it is often more important that a prisoner's complaint sets forth a nonfrivolous claim meeting all procedural prerequisites, since the court may pass on the complaint's sufficiency ... and may dismiss the case if it is deemed frivolous. ... Even the most dedicated trial judges are bound to overlook meritorious cases without the benefit of an adversary presentation." Id., at 826. "It is the rule of courts to remedy past or imminent official interference with individual inmates' presentation of claims to the courts." *Lewis,* 518 U.S., at 349-350.

> 'The right that *Bounds* acknowledged was the (already well established) right of access to the courts. E.g., *Bounds,* 430 U.S., at 817, 821, 828. In the cases to which *Bounds* traced its roots, we have protected that right by prohibiting state prison officials from actively interfering with inmates' attempts to prepare legal documents. ... for indigent inmates *Bounds* focused on the same entitlements of access to the courts. Although it affirmed a court order requiring North Carolina to make law library facilities available to inmates, it stressed that that was merely "one constitutionally acceptable means to assure meaningful access to the courts" and that "our decision here ... does not foreclose alternative means to achieve that goal." 430 U.S., at 830. In other words, prison law libraries and legal assistance programs are not ends in themselves, but only the means for ensuring "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." Id., at 825.' Id., at 350-351. (Emphasis added.)

As to Lynch's Motion for Purchase of Computer, the District Court did not have to deny Lynch's request et al., but could have insured Lynch's constitutional right to view digitalized legal documents for his access to the courts by ordering the Warden, the Respondent, to provide in each housing unit a laptop computer for all inmates who needed to view digitalized legal documents for access to the courts.

But the District Court decided to Order "Petitioner's Motion to Order Respondent to Contract with Lynch for Purchase of a Computer is DENIED. (DC Doc. No. 24.) This request is simply not legally supportable." DC Doc. No. 40, at p 1. As the District Court failed to cite any legal authority to support its denial, then its denial of Lynch's said Motion can be construed as "arbitrary," and thereby an abuse of discretion. See *U.S. v. Wright*, 826 F.2d, 938, 943 (10th Cir. 1987). ("Abuse of discretion occurs when a judicial determination is arbitrary"). Additionally, an abuse of discretion occurs when a district court makes "an overriding of the law by the manifestly unreasonable judgment ... as shown by ... the record of proceedings." Id., As the District Court's interlocutory Order on this issue, DC Doc. No. 40, at p 1, was contrary to law on the Fourteenth Amendment Equal Protection Clause for access to the courts as established by the U.S. Supreme Court decisions of *Bounds*, 430 U.S., supra, and *Lewis*, 518 U.S., supra, then the District Court's said Order was contrary to established law that reasonable jurists could debate whether Lynch's Habeas case should have been resolved in a different manner.

X. Court of Appeals' Order Denying COA Was Contrary To Established Law.

Subsequent to Lynch' Notice of Appeal, the Court of Appeals ordered Lynch to file an Appellant's Combined Opening Brief and Application for a Certificate of Appealability. On January 28, 2019, Lynch mailed to the Court of Appeals his Combined Opening Appellant Brief, ("Appellant Brief"), and Application for Certificate of Appealability, ("Request for COA"). On February 19, 2019, the Court of Appeals denied Lynch's Request for COA 'because Lynch has not "made a substantial showing of the denial of a constitutional right," [28 U.S.C.] §2253(c)(2).' App. A, at p 1. Also:

> "Having undertaken a review of Lynch's appellate filings, the district court's thorough order, and the entire record before this court pursuant to the framework set out by the Supreme Court in *Miller-El [v. Cockrell*, 537 U.S. 332 (2003)] and *Slack [v. McDaniel*, 529 U.S. 473 (2000)], we conclude Lynch is not entitled to a COA. The district court's resolution of Lynch's §2254 petition is not reasonably subject to debate and the issues he seeks to raise on appeal are not adequate to deserve further proceedings. Furthermore, it cannot be reasonably

> argued the district court abused its discretion when it denied Lynch's request for appointed counsel, provision of a law library, ability to purchase a computer, and the ability to block his transfer to another facility. In so ruling, this court concludes it is unnecessary to recapitulate the district court's careful analysis."

Id., at p 4. Emphasis added.

First: As the Court of Appeals did not address specifically any of the substantial constitutional "issues [Lynch] seeks to raise on appeal" that are "adequate to deserve further proceedings," id., supra, that are substantiated with citation to facts in the record and relevant established law, see Appellant Brief, at pp 13-23, and Lynch's "complaint concludes that [he] has indeed been denied substantial constitutional rights, [where a l]iberal construction is to be accorded to a pro se complaint," *Sigafus v. Brown,* 416 F.2d 105, 106 (7th Cir. 1969); 106 n. 4,[9] then the Court of Appeals' Order denying Request for COA, see App. A, at p 1, violated Lynch's constitutional right to due process of law under the Fifth and Fourteenth Amendment Due Process Clause, which is contrary to established law under *Tumey,* 273 U.S., at 532 ("not to hold the balance nice, clear and true ... denies the [petitioner] of due process of law"), that reasonable jurists could debate whether Lynch's Request for COA should have been resolved in a different manner.

Second: The Court of Appeals "concludes it is unnecessary to recapitulate the district court's careful analysis of "Lynch's request for appointed counsel, provisions of a law library, ability to purchase a computer, and the ability to block his transfer to another facility." App. A, supra. The Court of Appeals could not "recapitulate the district court's careful analysis" because there is nothing in the District Court's record to show it performed any "analysis," "careful" or otherwise, of these Federal issues Lynch raised in his Brief, as the District Court had presented no facts from the record or citation to established law to rebut Lync's claims of violation to his constitutional right of access to the courts established by *Bounds,* 430 U.S., at 821, 823, 825, 828, 828 n. 17; *Lewis,* 518 U.S., at 349-350, 351, under the Fourteenth

[9] "*Dioguardio v. Durning,* 139 F.2d 774, 775 (2nd Cir. 1944); *Rini v. Katzenbach,* 374 F.2d 836, 837 (7th Cir. 1967); 2A Moor's Federal Practice P8.13 p. 1707 (2d ed. 1968)."

Amendment Equal Protection Clause. Thereby, the Court of Appeals' conclusion of fact is a false statement that fails as a matter of law and violates Lynch's constitutional right of due process of law under the Fifth and Fourteenth Amendment Due Process Clause, which is contrary to established law in *Lisenba,* 314 U.S., at 236 ("that fundamental fairness is essential to the very concept of justice"), that reasonable jurists could debate whether Lynch's Request for COA should have been resolved in a different manner.

Third: Since Lynch's complaint concludes he has been denied the substantial constitutional right of access to the courts from the denial of his "request for appointed counsel, provisions of a law library, ability to purchase a computer, and the ability to block his transfer to another facility," CA Doc. No. _____, at p 4, under the Fourteenth Amendment Equal Protection clause, then a liberal construction is to be accorded Lynch as a pro se complainant. See *Sigafus,* 416 F.2d, at 106; *Dioguardio,* 139 F.2d, at 775; *Rini,* 374 F.2d, at 873. And, as each "Federal question was decided against the claim of Federal rights, and the decision of the question was essential to the judgment rendered[, then t]his is enough to give this Court the authority to re-examine [each] question on writ of error," *Chambers,* 207 U.S., at 148, as a violation of Lynch's constitutional right of access to the courts that jurists could debate whether Lynch's Request for COA should have been resolved in a different manner.

CONCLUSION

Lynch has shown in Questions X, with citation of facts in the record and established law, the Court of Appeals' Orders denying Lynch's Request for COA violated Lynch's constitutional rights of due process of law and access to the courts. Pursuant to 28 U.S.C. §2253(c)(1)(A), "a circuit justice or judge" must issue a COA before an appeal can "be taken to the court of appeals from the final order in a habeas corpus proceeding." Thereby, this Supreme Court can simply remand this case to the Court of Appeals with instructions to rehear Lynch's Request for COA based on the constitutional issues raised in Lynch's Opening Brief. Elsewise, as shown in the Reasons for Granting the Writ above that Lynch substantiated with

citation to facts in the record and established law that the judgments rendered by the District Court and the Court of Appeals had substantially violated Lynch's constitutional rights of due process of law and access to the courts guaranteed by the Fifth and Fourteenth Amendment Due Process Clause and the Fourteenth Amendment Equal Protection Clause, where such judgments were contrary to law established by the Supreme Court and where reasonable jurists could debate whether Lynch's Habeas Corpus claims of constitutional-error at trial and claims of actual innocence, and his claims of constitutional-error on Appeal, should have been resolved in a different manner, then Lynch respectfully requests this august Supreme Court that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Sherman A. Lynch
Petitioner, pro se

Dated: June 14, 2019.