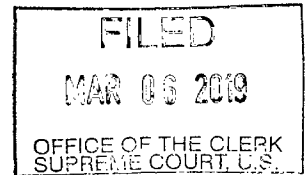


19 - 5322 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



OTIS J. CUMMINGS, JR. — PETITIONER
(Your Name)

vs.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

OTIS J. CUMMINGS, #33844
(Your Name)

P.O. Box 1419
(Address)

Leakesville, MS. 39451
(City, State, Zip Code)

(601) 394-5600
(Phone Number)

QUESTION(S) PRESENTED

Whether Counsel's Ineffective Assistance Deprived the Petitioner of Some Substantive or Procedural Right to Which the Law Entitles Him?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

STATE OF MISSISSIPPI (ATTORNEY GENERAL, JIM HOOD)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>Order of The Supreme Court of Mississippi</i>
APPENDIX B	
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Barnard v. Henderson, 514 F. 2d 744 (5 th Cir. 1975)	6, 7
Brady v. Maryland, 373 U.S. 83	6
Goodwin v. Balkcom, 684 F. 2d 794, 805 (11 th Cir. 1982)	7
Llewellyn v. Oakland County Prosecutor's Office, 402 F. Supp. 1379, 2393 (E.D. Mich. 1975)	6
Mason v. Arizona, 504 F. 2d 1345, 1351 (9 th Cir. 1974)	7
White v. Maggio, 556 2d 1352 (5 th Cir. 1977)	6

STATUTES AND RULES

U.S. Const. Amendments. V, VI and XIV	3
U.S. Const. Amend. VI	3, 7
U.S. Const. Amend. XIV	4
MISS. CODE ANN. § 63-11-13D	5

OTHER

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 _____ 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☐ is unpublished.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 United States district 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.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A 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 _____.

☐ 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 _____.

☐ 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 12/6/2018.
A copy of that decision appears at Appendix A.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment V, VI and XIV to the United States Constitution which provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

Amendment 6 - Right to Speedy Trial Confrontation of Witnesses.
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 accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment 14 - Citizenship Rights.

Section 1. 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 wherein 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 laws.

STATEMENT OF THE CASE

The petitioner's complaint alleged that he was charged with felony driving under the influence (DUI) by Mississippi State Highway Patrol Officer on May 19, 2008. It further alleged that the charges is false and that following the arrest, the petitioner was transported to the Choctaw County Mississippi Police Headquarters and subsequently asked to submit to a intoximeter test, where he refused, and was not advised by the State Highway Patrol Officer of the Mississippi Implied Consent Law pursuant to Mississippi Code Annotated Section 63-11-136, denied the petitioner the opportunity to have an expert of his choosing, to effectively confront and cross-examine the State's experts and present alternatives to the State's findings. It also alleged that trial counsel's failure to perform the independent duty to investigate and undertake discovery fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced Petitioner's right to fundamental fairness, because the State Highway Patrol Officer was allowed to testify that Petitioner smelled of alcohol, slurred in his speech and refused to submit to the intoximeter, on the basis Petitioner was not advised of the Mississippi Implied Consent Law he lacked sufficient evidence that could be used for impeachment and cross-examination of the State's witness but for his counsel's errors there exist a reasonable probability that the circuit court would have found that the State prejudiced Petitioner's right to fundamental fairness and dismissed this case with prejudice. On December 10, 2018 the Supreme Court of Mississippi rejected Petitioner's claims holding, that because he failed to meet the two prong test set in *Strickland*, that such claim does not meet the exception rule to over-come the bars.

REASON FOR GRANTING THE PETITION

A. The Relief Sought Will Serve the Public Interest

In this case the grant of relief will serve the public interest because it is always the public interest for state officials to obey the law especially the constitution. Stewart v. Oakland County Prosecutors' Office, 402 F. Supp. 1372, 2393 (E.D. Mich. 1975) (stating "the constitution is the ultimate expression of the public interest"). In addition the United States Supreme Court has held that "[s]ociety wins not only when the guilty are convicted but when criminal trials are fair our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.'" Brady v. Maryland, 373 U.S. 83 id. 88, Under Brady the state must allow the defendant access to physical evidence and allow him to conduct his own analysis of such evidence. Barnard v. Henderson, 514 F. 2d 749 (5th Cir. 1975); White v. Maggio, 556 F. 2d 1352 (5th Cir. 1977). As the

Fifth Circuit observed in Barnard:

Fundamental fairness is violated when a criminal defendant on trial for his liberty is denied the opportunity to have an expert of his choosing bound by appropriate safeguards imposed by the court examine a piece of critical evidence whose nature is subject to varying expert opinion.

514 F. 2d at 746. The Court observed that access to such evidence allows the defendant to discover exculpatory evidence, effectively confront and cross-examine the State's experts and present alternatives to the State's findings. *Id.*

The requirement for discovery finds further support in the Sixth Amendment. Counsel has a duty to undertake discovery for "call the heart of effective representation is the independent duty to investigate . . ." Goodwin v. Balkcom, 484 F. 2d 794, 805 (11th Cir. 1982). See also Mason v. Arizona, 504 F. 2d 1345, 1351 (9th Cir. 1974).

CONCLUSION

For the foregoing reasons certiorari should be granted in this case.

Date: March 6, 2019

Respectfully Submitted,


Petitioner

OTIS J. CUMMINGS, JR.

P.O. 1419

Leakesville, Ms. 39451