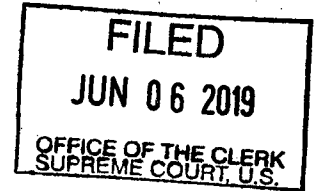


19-5530 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Heroyhyons — PETITIONER
(Your Name)

vs.

Thomas Brinn — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Heroyhyons
(Your Name)

9625 Pierce Rd.
(Address)

Laginaw Mich 481623
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Motion for Stit of Coertisari or in View of granting Coertisari Remand to the Sixth Circuit with instructions to consider the amended Rule 5 material after Remand to the District for production by the Staden, per Bell v. Howe, amended Rule 5 material and an evidentiary hearing

Claim

Did the District Court abuse it's discretion and commit reversible error when it failed to reopen Hyons v. Haffer, when confronted with "clear and convincing" evidence [People v Jefferson / People v Siebert] the State had deliberately committed a fraud on the Federal courts. And the Sixth Circuit opinion in Hyons v. Skinn, ignores settled Supreme Court precedents' and conflicts with published Sixth Circuit precedent of Demjanjuk v. Petrovsky, and Leaster v. Anderson [Fraud on the courts sustained the conviction of an innocent man, McQuiggin v. Perkins, ___ U.S. ___, 133 S.Ct 1924 (2013)]

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:

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Statutes and Rules

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(1) A palpable defect (2) by which the court and the parties were misled and (3) the correction of which will result in a different disposition of the case

pg 22

Statutes and Rules Cont...

Rule 5, 6, and 7

The district court could have ordered the production of additional transcripts, authorized discovery, or expanded the record. But the government has an obligation to take no steps that prevent an adversary from presenting his case fully and fairly.

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Rule 60(b)

[A]ttempts, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings

Pgs: 2, 3

Rule 60(b)(6)

A catchall provision that permits a district court to set aside a judgment for any other reason that justifies relief
(VIII)

Statutes and Rules Cont...

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Rule 60(d)(3)

Permits a court to set aside a judgment for fraud on the court

Pgs: 8, 11, 32

Brady Rule ~ Discovery

[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.

Pgs: 5, 9, 11, 12, 14, 19, 20, 27, 32

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 _____; 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 _____ 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 1-4-2019.

[] 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: 2-20-2019, and a copy of the order denying rehearing appears at Appendix C.

en Banc 3-8-2019 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.

See cover letter →

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).

In the United States Supreme Court

heroy hyons #290297

v.

Thomas Kimm, Starden

Motion for writ of Certiorari or in lieu
of granting Certiorari Remand to the Sixth
Circuit with instruction to consider the amen-
ded Rule 5 material after Remand to the
District for production by the Starden, per
Bell v. Howes, amended Rule 5 material
and an evidentiary hearing

Now comes heroy hyons, Petitioner, appearing here
pro se and respectfully move this Honorable Court grant
Certiorari or in lieu of granting Certiorari, Remand hyons
v. Kimm, CDA # 18-1882, to the Sixth Circuit Court of
Appeals with instructions to Remand to the District Court

to order the Stardon to supplement Rule 5 material with the records, files, and affidavits that makes-up the Detroit Police Homicide files #87-647, Miscellaneous files, the Prosecutor's files and the Attorney General's files. See Bell v. Howes, 757 F Supp2d 720 (citing Willis v. Jones, 329 Fed Appx 71 (6th Cir 2009)) (The District Court ordered the Stardon to supplement Rule 5 with the entire Detroit Police Homicide files and held an evidentiary hearing)

The decision in Hyons v. Armon, LRA #18-1882 is "contrary to" and an "unreasonable application of" Bonzalez v. Crosby, 545 US 524 (2005) and conflicts with Sixth Circuit precedents in Demjanjuk v. Petrovsky, 10 F3d 338 (6th Cir 1993) and Lecker v. Anderson, 585 F3d 1007 (6th Cir 2009). Rule 60(b)(6)

"Rule 60(b)(6) is a catchall provision that permits a district court to set aside a judgment for 'any other reason that justifies relief' Fed. R. Civ. P. 60(b)(6). A proper Rule 60(b) motion attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect

in the integrity of the federal habeas proceedings.' Donzed-
ez v. Crosby, 545 U.S. 524, 532, 125 S.Ct. 2641, 162 L.Ed.2d
480 (2005). A movant that seeks relief under Rule 60(b)
must show 'extraordinary circumstances justifying the re-
opening of a final judgment.' Id. at 535, 125 S.Ct. 2641.
Conner v. Anderson, 585 F.3d 1007, 1011 (6th Cir. 2009)

Petitioner carries his burden of proving that
the integrity of the proceedings were compromised by the
Starden deliberately withholding evidence, specifically id-
entified and requested, to mislead the District Court

This Court should find the District Court's
argument unpersuasive that the Starden is in compliance
with disclosure obligations. And the Sixth Circuit Court
of Appeals overlooked the record "... that demonstrates
that the Starden shirked a duty to turn over ... informa-
tion' to the district court. 585 F.3d at 1012" Lyons v. Stimm
COA #18-1882 (6th Cir. 2019) (citing Conner v. Anderson, supra)
The Starden's counsel's failure to sua sponte turn this
information over to the court during federal civil 2254
habeas proceedings warrants relief under Rule 60(b)(6)
(3)

Claim

The District Court abused its discretion and committed reversible error when it failed to re-open Hyons v. Haffer, when confronted with "clear and convincing" evidence [People v. Jefferson / People v. Siebert] the State had deliberately committed a fraud on the Federal courts. And the Sixth Circuit's opinion in Hyons v. Skinn, ignores settled Supreme Court precedents and conflicts with published Sixth Circuit precedent of Nemjanjuk v. Petrovsky and Lecker v. Anderson. [Fraud on the Courts to sustain the conviction of an innocent man M^cQuiggin v. Perkins]

The Attorney General cannot escape its obligations of candor to the courts. "Prosecutor's duty is not only to use every legitimate means to bring about a just conviction, but to refrain from improper methods calculated to produce a wrongful conviction" Borger v. United States, 295 U.S. 78, 78 (1935)

It's misconduct for the Attorney General to deliberately withhold exculpatory evidence to mislead the courts. "He may strike hard blows, he is not at liberty to strike foul ones." Berger, supra at 88

"...The Court has also made plain that the prosecution cannot escape its disclosure obligation by compartmentalizing information or failing to inform others in the office of relevant information... The Court held that the prosecutor's office ~ here OAD ~ is responsible as a corporate entity for disclosure." Nemjanjuk supra 353

Therefore, the State had a "disclosure obligation" under Rules 5, 6, 7, 8 and its Brady disclosure (files, records and affidavits that make up the Detroit Police Homicide #87-647, Miscellaneous Files, Prosecutor's Files and Attorney General's Files) was evidence known by the Starden ~ Rule 6D(b)(6) ~ but was deliberately withheld from the district court

The State's theory of "entrapment" was proven to have "no evidence" Thompson v. Louisville,
(5)

362 US 199 and the trial court directed a verdict of acquitted ~ Extortion, Felony Murder

The Warden had a duty to admit to the District Court that the reason David Perry was not charged, because according to the State's Appellee's Brief on Appeal, John W. O'Hair, Prosecuting Attorney, signed by Thomas M. Chambers (P-32662) pgs 45-47, Polark was killed during a hecked argument with the alleged codependant ~ no plan with Petitioner

State's Brief, Court of Appeal 222430, 3/13/00 pgs 45-47 and David Perry's trial testimony, argued trustworthy by the State, raises serious doubts about Venus Bales third or forth attempt at guessing and she admitted, under oath, she lied, because her prior statements had completely exonerated me. Venus Bales incriminatory statements came 11 years and a number of interviews with law enforcement where she admits she was less than honest And the Warden knew, but kept from the District Court, that the

(6)

physical evidence; the wounds, the lack of blood on and in Lelak's underwear and pants, the spent shells in the trunk where the body was discovered are all exculpatory evidence of my actual innocence.

Under its obligation of candor to the District Court, the Starden had a duty to admit my involvement and the corpus delicti was established in violation of Michigan Law. Statements attributed to the non-testifying codependant are inadmissible and violates the Brunton Rule [Brunton v. United States 391 U.S. 123 (1968)] See also Lewis v. Washington, 541 U.S. 36 (2004); Ohio v. Roberts, 448 U.S. 56 (1980)

Mary Johnson's coerced statements of what the non-testifying codependant said or what she said David Perry said he said are incompetent as evidence and was inadmissible. See State's Appellee's Brief April 13, 2000, Docket 222430 Nevertheless, the State depends on and admittedly based its conviction on inadmissible hearsay, pgs 31-38. Falsely, stating it was never objected to. Hearsay within hearsay
(?)

The Warden's duty of candor to the Court required the Warden to admit to the District Court Mary Jefferson was a confidential informant for State and Federal law enforcement who's documented lies misled the trial judge and District People v Liebert, 450 Mich 500, 524 (1995) (Her agreement at the time of her statement was to assist State and Federal law enforcement in drug enforcement in which she claimed I was involved) I filed Rule 60 (d); [3K] Where a party alleges that a fraud has been committed on the court, it is generally an abuse of discretion for the court to decide the motion without first conducting an evidentiary hearing into the allegations' Michigan Bank ~ Midwest v. W. J. Reynaert, Inc., 1165 Mich App 630, 643; 419 N.W.2d 439 (1988); St. Clair Commercial & Savings Bank v. Macaulay, 166 Mich App 210, 214-215; 238 N.W.2d 806 (1975) Lu den 396 N.W.2d 864 (1976) "Rapaport v. Rapaport, 185 Mich App 12, 16-17 (1990); Rule 8

Unlike Dennjanjuk, where all the proceedings against him were civil, the Warden, in Hyman v. Hyman is answering the court in a criminal conviction

while deliberately withholding exculpatory evidence that was requested under Brady (the coporate entity) and Rules 5, 6, 7 and 8; (the Detroit Police Homicide Files #87-647, the Miscellaneous Files, the Prosecutor's Files and the Attorney General's Files) Accord Wkt #69

"... we held that the O&O attorneys acted with reckless disregard for the truth and for the government's obligation to take no steps that prevent an adversary from presenting his case fully and fairly. This was fraud on the court in the circumstances of this case where, by recklessly assuming Demjanjuk's guilt, they failed to observe their obligation to produce exculpatory material requested by Demjanjuk."

Demjanjuk, at 354; Kyles v. Ahrley, 514 U.S. 419

Under Michigan law the corpus delicti requires that a preponderance of circumstantial or direct evidence independent of a defendant's inculpatory statements, establish the occurrence of a specific injury and criminal agency as the source of the injury before such statement

(9)

may be admitted as evidence. People v Mc Mahan, 451 Mich 543, 548-549 (1996); People v Kennad, 449 Mich 263, 269-270 (1995); People v Metzler, 193 Mich App 541, 547 (1992); "The corpus delicti also cannot be established solely by the extrajudicial admission or confession of another who has admitted his participation in the event" People v Aska, 337 Mich 590 (1953); see also People v Barron, 381 Mich 421 (1968); People v Nelson, 123 Mich App 649 (1983)

"We have found no reported Michigan decision involving a 'missing body' where there's no direct admission, no physical evidence, and no witness to some part of the killing or disposal of the body" People v Fisher, 193 Mich App 284, 285 (1992)

The Starden and his attorneys fails to meet this standard, instead, they deliberately withheld exculpatory evidence ~ the Detroit Police Homicide File #87-647 [deads for testimony] and impeachment evidence [hearsay testimony covered by falsely denied State premises] Accord Hyons v. Hyffer, 2:10-cv-11386 (2/16/18) Wkt #68 pgs 5-6 evidence the

State unequivocally told this [District] Court didn't exist." This was an attack on the "judicial machinery itself." no reasonable habeas court judge would have denied Petitioner Lyons' claim of actual innocence without the necessity of an evidentiary hearing. Rule 60(d) NKT# 48; Rule 60(b)(6) NKT# 66, Lyons, supra

Because an evidentiary hearing is not barred by Pinholster or 2254(e)(2) the court has "broad discretion" to conduct such a hearing. Drake, 321 F3d at 347 ~ discretion that is typically exercised when a "new hearing would have the potential to advance the petitioner's claim" Campbell v. Vaughn, 209 F3d 280, 287 (3d Cir 2000) See also Lopez v. Miller, 906 F Supp 2d 42, 52-53 (E.D. N.Y. 2012); Lyons, supra NKT# 68, #69, #70, and #71

The Court misreads Lecker, 585 F3d at 1012-1013, in its Order, Lyons v. Kimm 18-1882 (6th Cir 2019) (Jan 4, 2019) "Brady... do not apply in habeas proceedings... As in Lecker, then, "no evidence exists that demonstrates that the Aardem shirked a duty to turn over... information" to the district court, 585 F3d at 1012." Id pg 3 The Aardem cannot compartmentalize evidence that was discovered during Brady, but they did

(11)

The United States Supreme Court forbids the Warden from "... escaping its disclosure obligation by compartmentalizing information or failing to inform others in the office of relevant information.... The Court pointed out that 'the prosecutor's office is an entity and as such it is the spokesman for the Government' The Court held that the prosecutor's office ~ here D&D [the Warden] ~ is responsible as a corporate entity for disclosure" Demjanjuk, supra at 353; Siglio v. United States, 405 US 150 (1972); Brady v. Maryland; Kyles, supra at 437

This case is synonymous to the dynamics of Demjanjuk, the State's denial of Rule 5 material, identified, but was hid to prove my culpability in these homicides was "reckless concealment"

The Sixth Circuit reasoned: "The attitude of the D&D attorneys towards disclosing information to Demjanjuk's counsel was not consistent with the government's obligation to work for justice rather than for a result that favors its attorneys' preconceived ideas of what the outcome of the legal proceedings should be... We do not believe their personal convictions that they had the

right man provided an excuse for recklessly disregarding their obligation to provide information specifically requested by Demjanjuk (as found by the master) the withholding of which almost certainly misled his counsel and endangered his ability to mount a defense (as found by the master)." Demjanjuk, *supra* at 349-350

Conclusion

To support a claim of actual innocence, a petitioner in a collateral proceeding" must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *Le. Bowley v. United States*, 523 U.S. 614, 623 (1998) (quoting *Schup v. Delo*, 513 U.S. 298, 327-28 (1995))

"Of evidence"... show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is... entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry." *Bracy v. Bramley*, 520 U.S. 899 (1997) (quoting *Harris v. Nelson*, 394 U.S. 389 (1969))

The Starden deliberately misled the District Court by withholding the files, record and affidavits that make up the Detroit Police Homicide files #87-147, Miscellaneous files, Prosecutor's files and the Attorney General files. Brady v. Maryland, 373 U.S. 83 (1963), Rule 5

"See Lariviera v. Roth, 172 F.3d 991, 995-96 (7th Cir 1999) (petitioner had not defaulted his Brady claims based on newly discovered information: 'He will not penalize Lariviera for presenting an issue to us that he was unable to present to the state courts because of the state court's misconduct'." Starkins v. Miller, 92 F. Supp.2d 824, 831 (S.D. Ind. 2000)

Mr Spada (trial prosecutor): And also, your honor, I've given a copy of the criminal histories of our witnesses that we'll be producing. Nothing in those criminal histories, under appropriate court rules, can be used against them. And I ask that no questions be asked about their criminal histories. JJ
vol 2 pg 8

People v. Liebert, 450 Mich 500, 524 (1995) and
(14)

People v Jefferson, 201 Mich App 402 (1993); Mr Spada knew or should have known his representation to the court was false See Dkt 48; Napue v. Illinois, 360 US 264 (1959)

The District Court depended on these false representations Dkt 49 Napue (must fall under 14 Amend.)

Rule 60(b)(6), which permits a court to grant a motion for "any other reason that justifies relief." Fed R Civ P 60(b)(6), is also "an appropriate vehicle to bring forward a claim for fraud on the court" ~ here, that caused the conviction of an innocent man and attacked the federal judicial machinery itself; Dkt 66 Accord Bonzalez v. Lord, 545 US 524, 532 n5 (2005) Fraud on the courts

This is the extraordinary case, there is overwhelming evidence ~ from testimony and the physical facts, my involvement in either killing is purely speculation, supposition and innuendo, the State's case against me is entirely supported by "hearsay" and "hearsay within hearsay" statements attributed to Preston Lyons about his behavior by Mary Jefferson (Alern) and David

(15)

Party, who's eyewitness testimony exculpate me

For evidence to support my claims of actual innocence, and conviction by "fraud on the courts," this Court need look no further than the State of Michigan's, Appeal's Brief - Court of Appeals #222430 - 4/13/00

The Sixth Circuit, Court of Appeal's decision in Hyons v. Nunn, #18-1882 6th Cir 2018 conflicts with Nemjanjuk v. Petrovsky, 10 F3d 338 (6th Cir 1993) and Corcoran v. Anderson, 585 F3d 1007 (6th Cir 2009) established precedent's

Under Rule 60(b)(6), I have established the 5 objectives the Sixth Circuit required to prove fraud on the Court and under Rule 5, 6, 7 and 8 can make a prima facie case of actual innocence with the production of the Detroit Police Homicide file #87-147 Leo Bell v. Howes, 757 F Supp 2d 720 (citing Skellis v. Jones, 329 Fed Appx 7 (6th Cir 2009)) (the District Court ordered Respondents to Supplement Rule 5 with entire Detroit Police Homicide file) Hyons v. Hyler, Dkt #48,

#68, #69, #70, and #71

The Starden knew, based on the State's Appeal's Brief #222430, the State's case, at best, was a "misdemeanor." There's no evidence I committed a murder, participated in a murder or was present when a murder was committed (procured, encouraged, aided or abetted)

David Perry's eyewitness testimony exonerate me and the Medical Examiner's testimony:

"The gunshot wound to the left buttocks and the left arm were consistent with the deceased lying on his right side and being shot from above, as if he were lying in the trunk of a car (Perry Trial Transcript, Vol II pp 65-66)"

Corroborated by Sally Shaw's statement and the blood evidence is evidence he was shot in the trunk on June 1 minutes before the car fire. The spent shell in the trunk demonstrate only one gun was involved, this and Tonya Randall's statement Oct 48, Exhibit #6 "no car in the alley" and "no gun shots" when the event was fresh in her mind mandates the necessity

for an "evidentiary hearing" to show the withholding of Detroit Police Homicide files # 87-647, Miscellaneous files, Prosecutor's files and Attorney General's files, possessed evidence that proved Venus Bides version of the events testified to, are inconsistent with the physical evidents

And an alleged extrajudicial statement attributed to the codefendant, by Jefferson, who's motives are suspect; Preston "... told her that he had to kill [her]

... because she loved Lewis and she would probably tell '[1] Vol 18 p 18" Brief # 222430 pg 35... is bootstrapped evidence, but it

demonstrates her undue to the State's case, it was inadmissible and incompetent under Michigan law to establish the corpus delicti. Mc Mahan, 451 Mich at 548-549. Konrad, 449 Mich 269-270. Aika, 337 Mich 590 ("The corpus delicti also cannot be established solely by extrajudicial admission or confession of another who has admitted his participation in the event") It also exculpate me

Therefore, for the reasons outlined herein.

this Court acting pursuant to Fed. R. Civ. P. 60(b)(6) and the All Writs Act, 28 USC 1651 should Reopen and Remand to the Court of Appeals with instructions to determine whether the habeas corpus proceedings have been tainted by fraud on the court and prosecutorial misconduct before the District Court that requires this Court's intervention.

The prosecutor is the voice of the Government and the Attorney General is a member of the same office (corporate entity) and acting in his capacity he is assumed to know what the prosecutor knows. See Kyles, supra at 437-38 (holding that a prosecutor's ignorance of exculpatory evidence not produced by a state agency does not insulate the government from responsibility for a Brady violation)

The deliberate withholding of exculpatory and impeachment evidence in this completely circumstantial evidence case, is prosecutorial misconduct and casts grave doubt on the credibility of the witnesses ~ the foundation of the conviction and incarceration

Lyons v. Starn, is a carbon copy of the core principles established in Demjanjuk and continued in Levinsky ~ the Government (here the Starn) who is in the best position and under a duty to disclose all exculpatory evidence ~ is guilty of misconduct and fraud on the courts when it deliberately withholds evidence specifically identified and requested that "... prevent an adversary from presenting his case fully and fairly." Demjanjuk, supra at 354. See also Brady

The Starn's deliberate withholding of the Detroit Police Homicide file #87-647, Miscellaneous files Prosecutor's files and Attorney General files prevented Petitioner from "fully and fairly" presenting his case in the habeas corpus proceedings, contrary to Demzades v. Crosby, 545 U.S. 524 (2005) It was an attack on the "Judicial Machinery" itself

The United States Supreme Court have reasoned: "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. . . . This rule, or fundamental miscarriage of justice exception, is grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons." McQuiggin v. Perkins, — U.S. —, —, 133 S. Ct 1924, 1931 (2013) also Murray v. Carrier, 477 U.S. 478, 491b (1986)

In House v. Bell, 547 U.S. 518, "The court noted that it was not 'impressed with the allegations of individuals who wait over ten years to come forward' App 348 It also considered how the new testimony fit within the larger web of evidence. . . ."

Pursuant, Rule 60(b)(6), Hyatt v. Hyatt, 2:10-cv-11381, this Court ruled in Gonzalez, supra at 538 "We hold that Rule 60(b)(6) motion in a 2254 case is not to be treated as a successive habeas petition if it does not assert, or reassert, claims of error in the

moissant's state conviction"

Petitioner is not asserting or reasserting "claims of error in his state conviction" and its clear from the decision in Hyons v. Stimm, 18-1882, the Sixth Circuit understood:

- On his motions, Hyons cited Rule 6D (B)(6) and argued that the State committed fraud on the district court by withholding files, including those of the police and prosecutor, that allegedly include evidence of his actual innocence. "Hyons v. Stimm, *Supra* pg 2 (1/4/19)

On habeas corpus, the State denied any deals for testimony with witnesses, but People v. Liebert, and People v. Jefferson, demonstrates the misrepresentations and the concealment of the files. A palpable defect, by which the court and the parties were misled and the correction of which will result in a different disposition of the case. See E.D. Mich L.R. 2.1(h)(3)

Both Demjanjuk and Lester defines fraud on the court through a five part test

Petitioner alerted the Starden's counsel, and the District Court of the due process violations (Hyons v. Hyfer, Wkt #69) (meeting the five objectives in the test)

"Emergency Notice to AD Prina Kerbakis to seek concurrence to Petitioner's Motion for Reconsideration" 2/13/18

When Starden failed to supply the files, records and affidavits requested and identified under Rule 5, Petitioner was denied of due process and the protection of the Great Strik altogether

Petitioner prayed to the District Court for a ... (Hyons, Wkt #70)

"Motion for Court to find the Michigan Attorney General, Bill Schuette, Esq and Prina Kerbakis As Attorney General in Civil and Criminal Contempt ~ Obstru-

eking Justice and Committing a
Fraud Upon This Court" 2/26/18

The Sixth Circuit reasoned in Hyons v. Ström "...the district court could have ordered the production of additional transcripts, authorized discovery, or expanded the record, see Rule 5, 6, and 7 of the Rules Governing 2254 Cases, the district court did not do so in this case." 2d (6th Cir 2019) pg 2 Nor did the Ström (Attorney General), sua sponte, honor its disclosure obligation "...to take no steps that prevent an adversary from presenting his case fully and fairly." Demjanjuk, *supra* at 354. An abuse of discretion

Unlike Leavitt, *supra*, where the Sixth Circuit said "no evidence exists that the Ström shirked a duty to turn over... information" to the district court. 585 F3d at 1012" In Hyons v. Leffer, *supra* (E.D. 2/16/18, 2/13/18 and 2/26/18) Hyons presented "clear and convincing evidence" that the Attorney General deliberately withheld from the District Court exculpatory and impeachment evidence during the habeas corpus proceedings,

satisfying all 5 objectives articulated in Nemjanjuk and Lied with approval in Leavitt to establish "Abuse of process" and "Fraud on the court"

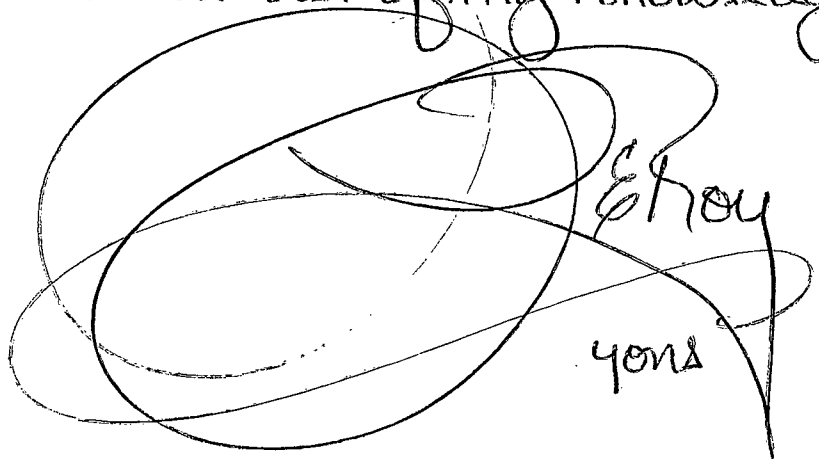
Finally, according to Michigan Jurisprudence, "Where a party alleges that a fraud has been committed on the court, it is generally an abuse of discretion for the court to decide the motion without first conducting an evidentiary hearing into the allegations." Michigan Bank - Midwest v. W.P. Reymont, Inc., 165 Mich App 630, 643, 419 N.W.2d 439 (1988); M. Lelair Commercial & Savings Bank v. Macauley, 66 Mich App 210, 214-215, 238 N.W.2d 806 (1975) & idem 396 N.W.2d 864 (1976); Rapaport v. Rapaport, 185 Mich App 12, 16-17 (1990)

Therefore, with all due respect, I pray this Honorable Court, in view of granting certiorari, Remand this case back to the Sixth Circuit with instructions to consider the amended Rule 5 material after Remand to the District for the Starden to produce the Detroit Police Homicide files #87-647, Miscellaneous files, Prosecutor's files and the Attorney General's files and an evidentiary hearing. See Bell v. Howes, 757 F. Supp.2d

720 (citing Strickland v. Jones, 329 Fed Appx 7 (6th Cir 2009))
(The District Court ordered Respondent to Supplement
Rule 5 with entire Detroit Police Homicide files)

Innocence people should not be forced
to suffer the heartship of an unjust and unconstitutional
incarceration when exculpatory evidence is being hid in the
files, records, and affidavits of the Detroit Police Homicide
files #87-476

By my signature affixed I swear the foregoing
is true and correct to the best of my knowledge
and belief



E. Roy
yons

REASONS FOR GRANTING THE PETITION

Petitioner was tried and convicted in an atmosphere of Constitutional unfairness. Due Process imposes a duty under Brady to disclose evidence favorable to the defense. Under Habeas Corpus, Rule 5, a civil proceeding, the Starden is prohibited from "compartmentalizing information" and on request must disclose all information that would assist a Petitioner to "fully and fairly present his claims." Nemjanjuk, 1033d at 535 (citing Giglio v. United States, 405 U.S. 150 (1972)).

This Starden in Habeas Corpus proceedings don't challenge the overwhelming evidence of Petitioner's innocence ~ Eye witness testimony Petitioner wasn't involved in Lelark's death, wasn't present or participated in his death, and evidence of an argument that escalated into a killing of which Petitioner wasn't present, that was the result of his death.

And it was the trial Court who determined Bodes is dead, in contrivance of well settled Michigan law. No body, no witness Petitioner was involved

in a killing or the disposal of a body, no crime scene, no blood, time, date or method of death. The corpus delicti was not established. Mc Mahan, supra 548-549.

The Starden could not escape its disclosure obligations by compartmentalizing information to deny Petitioner's request, pursuant to Rule 5, for the Detroit Police Homicide files #87-147, the Miscellaneous files, Prosecutor's files and the Attorney General's files Willis v. Jones, 329 Fed Appx. 7 (6th Cir 2009).

The Attorney General, the Starden's lawyer, is a part of the prosecution, an entity and as such he is the spokesman for the government - responsible as a corporate entity for disclosure.

Thus the Starden acted with reckless disregard for the truth and for the government's obligation to take no steps that prevent an adversary from presenting his case fully and fairly. This was proven on the court, by recklessly asserting Lyons' guilt, they failed to observe their obligation to produce exculpatory material requested by Lyons. Violating Due Process. Bell v. Howes, 757 F Supp2d 720, 734 (E.D. Mich 2010) (citing Harris v. Hayler, 553 F3d 1028, 1034 (6th Cir 2009)).

In Hyons v. Kimm, #18-1882 (6th Cir 2019) Doc #15-2 pg 3, the Court reasoned:

"And, although the district could have ordered the production of additional transcripts, authorized discovery, or expanded the record, see Rules 5, 6, and 7 of the Rules Governing 2254 Cases, the district court did not do so in this case." 2d

Hyons, *supra* pg 2

"On his 60A application, Hyons asserts his actual innocence, restates his allegation of fraud, and argues that the district court erred in failing to order the State to disclose the withheld files. He also asks this court to appoint counsel, hold his appeal in abeyance, and remand to the district court with instructions to order the State to produce the withheld files." [that demonstrates State's misconduct to conceal Hyons' actual innocence]

Rule 60(b)(6) allows for relief in the "Interests of Justice," extraordinary circumstances, where a judicial proceeding has been deliberately robbed of its integrity. Benzadez v. Crosby, 545 U.S. 524, 535 (2005); Nemjanjuk v. Petrovsky, 10 F.3d 383, 352 (No court system can function without safeguards against actions that interfere with its administration of justice)

—The Supreme Court has ruled:

"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." McQuiggin v. Perkins, — U.S. —, 133 S.Ct. 1924, 1931 (2013) (citing Murray v. Carrier, 477 U.S. 478, 496 (1986) with approval)

"This rule, or fundamental miscarriage of justice exception, is grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons"

McQuiggin, supra, 133 S.Ct at 1931 (citing Herrera v. Collins, 506 U.S. 390, 404 (1993))

The fruits of Petitioner's independent investigation and his filing of Rule 60(d) motion can be said to have triggered the Attorney General's obligation of its duty of disclosure and candor to the district court. The State court's record ~ People v Jefferson 202 Mich App 606, 610 (she served her time in a federal prison on a state charge) and People v Siebert, 450 Mich 500, 524 in "clear and convincing evidence" the State deliberately misled the district court

An innocent man is suffering the heartship of an unjust and unconstitutional incarceration, this Honorable Court should Remand with instruction for the State to disclose the files, record, and affidavits that makes up the Detroit Police Homicide files #87-467, Miscellaneous files, Prosecutor's files and the Attorney General's files to be presented in an evidentiary hearing.

The Sixth Circuit's reliance on Clear-
(31)

See 15. Anderson, 585 F3d 1007 (6th Cir 2009) is
inapposite, Leavler's claims are being analyzed from
a well developed record, after an evidentiary hearing

The Court's reasoning in Lyons, is
based on no legal principle, and is antagonistic to
Nemjanjuk's 5 objective test for fraud on the court
Rule 60(d), Rule 60(b)(6)

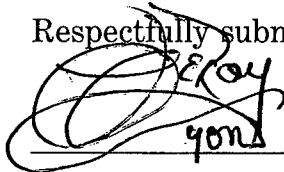
"As in Leavler, then 'into evidence exists that
demonstrates that the warden shirked a duty
to turn over ... information' to the district court.
585 F3d at 1012." Lyons v. Aimm, doc #15-2
pg 3 of Rule 5, 6, and 7 and Brady apply to pro
se litigants, Lyons has been denied due process

Lyons has been denied his one fair
round guaranteed to 2254 Petitioner's Concerning the
record is a due process violation. On Bank v. Wrethe, —
US —, — 124 S.Ct 1256, 1276 (2004) and Stichler v. Greene,
527 US 263, 281 (1999) "Cause and Prejudice" existed where
the State allowed a key State witness to lie and pro-
secutors concealed evidence and lied about it. "Did this actual
innocence case present an opportunity for this Court to give
guidance to lower courts when confronted with state misconduct
Rule 60(b)(6) (32)"

CONCLUSION

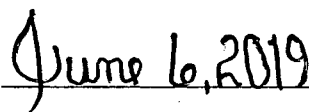
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jeffrey

Date:



June 6, 2019