19-5773 ORIGINAL

FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

John Franklin Kenney — PETITIONER
(Your Name)

vs.

P. D. Brazelton-Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Franklin Kenney
(Your Name)

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n/a
(Phone Number)

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# Questions Presented

I. Can a federal court, in a habeas corpus proceeding, disregard & deny a claim of con-viction based upon knowing use of false evidence?

II. Can a federal court, in a habeas corpus proceeding, deny access to the court to an incarcerated, indigent prisoner who has time-ly claimed actual innocence for reason of ~~an~~ newly-discovered evidence of mental disorder, but has been denied the assistance of coun-sel with discovery powers?

III. Can a federal court, in a habeas corpus proceeding, deny an incarcerated petitioner's claims based on a Motion filed by the Re-spondent, despite knowing & having evi-dence in hand that the Respondent had willfully withheld knowledge of such Motion & that the petitioner had had no opportunity to answer such ~~petition~~ Motion; & the court refused the petition's Request for Reconsideration af-ter he discovered the existence of the Re-spondent's Motion for dismissal?

IV. Can a federal court, in a habeas corpus proceeding, disregard a failure of a state court to hold an evidenciary hearing when, by state law, it is required to do so, & thereafter to treat the state court's one-word denial as if it were a reasoned decision, to the prejudice of the petitioner?

Parties to the Proceeding.

All parties to the proceeding appear in the caption of the case on the cover page.

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# Petition for a Writ of Certiorari.

Petitioner John Franklin Kenney respectfully petitions for a writ of certiorari to review the judgement of the United State Court of Appeals for the Ninth Circuit denying Petitioner's appeal from the denial of his Petition for a Writ of Habeas Corpus by the District Court of the Northern District of California.

## Opinions Below.

The opinion of the United State Court of Appeals appears at Appendix A, & is unpublished.
The opion of the District Court appears at Appendix B, & is unpublished.

## Jurisdiction.

[Preface: This petitioner is an 85-year old indigent prisoner; he suffers from Post-traumatic Stress Disorder ("P.T.S.D") caused by his combat experiences during the Korean War, macular degeneration, Parkinson's Dementia, & the inevitable diminishment of faculties which accompany old age. Thus he involves the Haines rule which instructs that legal paper submitted by indigent pro se prisoners be held to less stringent standards & be viewed in light most favorable to the pro per prisoner. Haines v. Kerner, 404 U.S. 519.] Petitioner has no legal training or assistance.

The United States Court of Appeals for the Ninth Circuit denied the petitioner's Request for Certificate of Appealability ["C.O.A."] without consideration of his case [18-15077] on 28 February 2019.

At that time, the petitioner believed that he was represented before the 9th Circuit Court by a lawyer whom his family had retained & paid to do so. When this petitioner discovered that he had been abandoned by his counsel, he requested an extension of time to file a Petition for a Writ of Certiorari until 28 July 2019. Justice Kagan granted this extension. [18A-1140].

Prior to the denial by the Court of Appeals, Petitioner had timely filed a petition for a writ of federal habeas corpus in the United States District Court for the Northern District of California, which was denied [C 5:13-cv-02562-LHK].

Statutory Provisions Involved.

The right of a state prisoner to seek habeas corpus relief is provided for in 28 USC § 2254. The standard for relief under "AEDPA" is set forth in subsections d(1), d(2), particularly, but not exclusively, as follows:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceeds unless the adjudication of the claim —

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United State, or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The right of a state pro se prisoner

to have the assistance of appointed counsel in a habeas corpus proceeding is set forth in the rules of the Federal Courts governing 2254 cases, particularly in rules (8)(c) & (6)(a).

Courts must appoint counsel if:

(i) Evidentiary hearing is ordered;

or,

(ii) Appointment of counsel is necessary to ensure effective use of discovery.

Courts have discretion to appoint counsel in Federal habeas corpus proceedings for:

(iii) Indigent prisoners;

when,

(iv) The interests of justice so require.

## Argument Summary

In this case, a then-74-year-old man has been sentenced to life imprisonment for the commission of acts which are not even crimes. His convictions were obtained by the presentation by the prosecutor through the knowing use of false evidence, as well as perjured testimony & the suppression of evidence. This petitioner has has presented prima facie evidence of perjury & false evidence to the State Supreme Court & to the District Court &

to the Federal Court of Appeals. Each has refused to review the petitioner's claims of false evidence for erroneous procedural reasons, or no reasons at all.

The obtaining of this petitioner convictions through the knowing use of false evidence was prosecutorial misconduct which the Supreme Court does not tolerate. The acts of the state A.G. in frustrating improperly a review of such false evidence was connivance. The denial by the District Court of examination of these same claims was erroneous.

In the early evening of 29 January 2007, the petitioner, Dr. John Franklin Kenney, was lured out of his house & entrapped into a violent affray by neighbors Mel & Elizabeth Grimes, who attacked him simultaneously from his rear & front with a deadly weapon. During the previous 5 months of residence, Mel & Elizabeth had attacked 4 persons in the same area; this was their third attack upon Kenney. During the previous 2 years, they had persistently made mortal threats ~~against~~ against Kenney & tried to strike him with their car while he was walking along the common driveway or narrow road. [Declaration of S. Youngs, Dkt. 83, 36, 38, 39.]

Kenney sought protection directly from the Sheriff's deputies the commander of the Monterey Peninsula Sheriff's district, the Monterey County Sheriff himself, & the Monterey District Attor-ney's office. All refused him, often contemp-tuosly.

Because of the continuing threat by the Grimes & the disdain by the law enforcement authorities of Kenney's need for protection, he prudently made a habit to wear, when-ever he had to go outside his house if the Grimes might be nearby, a pistol in his belt, in plain sight as a deterrent.

The fatal affray began when Elizabeth Grimes struck Kenney in the back of his head, while Mel Grimes charged him from (what had been) his front with a sledge hammer or a battering ram. In defense of his life, Kenney shot them both.

The fatal affray lasted less than 7 sec-onds. Only 4 shots were fired. The first 2 shots were directed at Mel (first) & Eliz-abeth (second) & were both fatal, respective-ly. The next 2 shots were meant to put Mel on the ground; he was standing up, close, & menacing. The third shot mis-sed Mel & struck Elizabeth in the back where she then lay; the fourth shot put Mel on the ground.

The 7 seconds of the fatal affray were a violent pandemonium. Elizabeth Grimes started screaming, "get off of me," the moment she struck Kenney from behind; (subsequent forensic investigation established that she had never been seized, struck, kicked, or assailed in any way).

There was no opportunity for pre-meditation, or lying-in-wait or planning, or malice aforethought. There was no evidence presented which could support a charge of first-degree murder. There was no evidence whatever that Kenney had ever intended to kill or harm anyone.

Kenney was convicted of first-degree murder (Elizabeth) & second-degree murder (Mel) by wrongful instructions to the jury by the trial judge, which instructions that judge justified by reasons explicitly based upon false evidence.

Kenney was convicted upon three (3) wrongful jury instructions by the trial judge.

(1) & The trial judge instructed the jurors

that they might view Kenney as the "initial aggressor", which he was not. The evidence of the sequence of actions of the assailants as revealed by a 911-recording, the positions of the persons, & the police reports, & Kenney's own testimony establish plainly that he was not the "initial aggressor."

(2.) The trial judge instructed the jurors that they might view Kenney as having "contrived" his claim of self-defence by unlawfully creating the confrontation. Such Kenney did not do; & it challenges the imagination to create a scenario in which he could have done so. The creation of a violent confrontation was part of a pattern of behavior by which the Grimes had been intimidating others in the neighbor-hood. [Declarations of S. Youngs, D. & C. Lincoln, C. Hudson, S. Murray, C. Williams, S.S. Khalsa, Dkt. 83].

(3.) The trial judge instructed the jurors that they might view this confrontation as "mutual combat", which the evidence shows that it certainly was not.

If any juror followed any of these three wrongful instructions, Kenney would have been deprived of his right to rely on self-defence.

Kenney's lawyer objected to those instructions. The trial judge justified his intructions as allowed by "other evidence" which consisted of a DVD, claimed to have been found in Kenney's house, which the trial judge asserted was "probative to demonstrate pre-medita-tion & planning.

That DVD, titled "First & Finish Moves" (or something similar), was false evidence either planted in Kenney's house, or claimed to be so.

That DVD had never been in Kenney's house prior to the date of the shooting affray, nor had Kenney ever possessed it. Kenney had never held, hear, or seen that DVD.

Approximately 5 years after Kenney was convicted a small group of his fellow com-municants from his church, the Sanctuary Bible Church of Carmel Valley, who were determined to get a new trial for him, be-gan a series of investigations into the evi-dence which had been presented at Kenney's trial. Their suspicion fell at once upon the DVD.

When that DVD had first been intro-duced, Kenney had instructed his lawyer, Nolan, to ascertain from where that DVD came. Nolan refused to initiate any investi-gation.

The former church Elder, Mr. Kim Wil-liams & the church Deaconess, Mrs. Chris-tine Williams initiated an investigation into the provenance of the DVD (among other things), at which they persisted in the face of resistance & obstruction on the parts of the Monterey Sheriff's department, D.A.'s office, & Superior Court. The Declara-tions of Kim & Christine Williams, & of the Petitioner, & the reports of Mr. Pierce, the President & sole proprietor of the company which made & solely sells that DVD are attached as Exhibits I-(1) - I-(4).

In brief, the investigations have estab-lished the following:

(1) The DVD was not in Kenney's house, nor in the specific place where it was perjuriously claimed to have been found, - the lower of 2 small draws of a filing cabinet, - on the date of the arrest, 29 January 2007. The contents of that drawer were carefully inventoried on that date; the DVD was not present then. (source: Sheriff's Report)

(2) Nine (9) days later, a Sheriff's deputy claims to have returned to the house, & to

have gone straight to the same small drawer & "discovered" the DVD.
(source Sheriff's Report)
(3) The forensic investigation determined that there were no finger-prints or DNA from Kenney on either the DVD or its case.
~~(3)~~ (Source: D.A. Report)
(4) Investigation of the company which is the sole manufacturer of that DVD, & which sells only direct, with no distributors, & which maintains careful customer records, had never sold that DVD to Kenney, nor to his company, nor even to anyone in his neighbor-hood.

The "First-&-Finish-Move" was false evidence.

## Statement of the Case

Information was filed against John Franklin Kenney on 17 June 2008. He was charged with first degree murder of Mel & Elizabeth Grimes, lying-in-wait, using a fire-arm.

Jury trial began 28 July 2008. The jury deliberated on 12-17 September until verdicts & findings were returned.

The jury found the charge of lying-in-

-wait untrue, for both Mel & Elizabeth Grimes.

The jury found Kenney not guilty of first--degree murder but guilty of second-degree murder, of Mel Grimes.

The jury found Kenney guilty of first-degree murder of Elizabeth Grimes, & of use of a firearm & various other enhancements.

Kenney appealed to the California Court of Appeals, Sixth Appellate Division, (Case no. SS81522) on record-based issues, & the appeal was rejected. A Petition for Review in the California Supreme Court was denied.

On 6 June 2013 Kenney filed timely a Petition for Writ of Habeas Corpus with the Federal District Court for the Northern District of California. (Case no. 5:13-cv-20562-LHK)

On 11 June 2014, Kenney filed a Motion for Stay & Abeyance of Habeas Corpus Action in order to return to the state courts in order to exhaust his claims of Actual Innocence based upon the newly-discovered evidence of (1) fake evidence, & (2), the determinative mental Disorder of Post-traumative Stress Disorder. (Dkt. no. 10)

On 19 November 2014, the California Supreme Court denied Kenney's Petition for a Writ of Habeas Corpus & Request for a Full Evidentiary Hearing, with a one-word Denial.

On 02 February 2015, Kenney filed timely a First Amended Petition incorporating his newly-discovered evidence, & asserting Actual Innocence, & requesting a Full Evidentiary Hearing. The Petitioner explicitly requested the appointment of counsel in order to enable him to discover the full facts & significance of his affliction of P.T.S.D. & to present those facts. (Dkt. no. 20)

His request for appointment of counsel was denied. (Docket no. 22)

Between 14 July 2015 & 16 November 2016, the Respondent filed a series of Motions, Replies, & Documents without notifying or sending copies to Kenney. During this period of approximately a year-&-a-half, Kenney filed three (3) formal Requests with the District Court to compel the Respondent to send copies of her filings to the Petitioner. (Dkt no. 23, 49, 56). Regrettably, the District Court did nothing. The Petitioner filed also three (3) formal Complaints with the Chief Judge of the District Court for Procedural Improprieties in the Conduct of Habeas Corpus Proceedings by a State Prisoner. These matters are discussed below in connection with Question 3. (Dkt. no. 51, 53, 55)

On 18 December 2017, the District Court

Denied his Petition for a Full Evidentiary Hearing, & denied also his Petition for a Writ of Habeas Corpus, & denied also his (as yet un-submitted) Request for Certificate of Appealability.

## Standard of Review.

In evaluating both the state's & the Federal District Court's denial of habeas relief, the Supreme Court must decide whether the determination that the Petitioner received was either "an unreasonable application of clearly established Federal law" or resulted from an "unreasonable determination of the facts." 28 U.S.C. § 2254.

I. To the Question, can a Federal Court, in a habeas corpus proceding, disregard & deny a claim of conviction based upon knowing use of fake evidence, the answer is a resounding NO!, This answer has been given by Supreme Court Justice Potter Stewart in the case of Miller v. Pate:

"More than thirty years ago, this court held that the 14th Amendment cannot tolerate a state criminal conviction obtained by the knowing use of fake evidence. There has been no deviation

or retreat from that established principle. There can be no retreat from that principle here."
[Miller v. Pate, 386 U.S. 1 (1967)]

The Petitioner's claim of fake evidence has never been reviewed.

The California Supreme Court returned a one-word denial when the petitioner presented prima facie evidence of the fake evidence.

The District Court allowed the Respondent to file improperly an erroneous Motion to dismiss the Petitioner's claim of fake evidence as "untimely" & to withold from the Petitioner Notice or a copy of that Reply-Motion. The District Court granted that improper Motion within a minimum period (34 days), despite knowing then that the Petitioner had received no Notice of that Reply-Motion & could not answer it. When the Petitioner discovered the Respondent's Reply-Motion claiming A.E.D.P.A. "untimelyness", he immediately filed a Request for Reconsideration. The District Court denied that Request.

The Petitioner's claim of Actual (or Legal) Innocence for reason of fake evi-

-dence was erroneously dismissed as "un-timely." The following 2 sub-sections deal with the improper claims that the issue of fake evidence was "untimely" & with the general issue of the irrelevancy of procedural considerations, such as asserted "untimeliness," for claims of Actual Innocence, respectively.

(1) The Petitioner's claims of Actual Innocence for reason of his convictions having been obtained through the knowing use of fake evidence were not brought untimely.

The evidence that the DVD's were fake was newly-discovered in the Summer of 2013. Therefore such automatically enjoyed a one-year time period to be presented to a Federal court. By Supreme Court law, that one-year period should be measured from the most recent Declaration supporting the claim. [McQuiggin v. Perkins, 133 S.Ct. 1924] "the statute of limitations began to run as of the date of the latest Affidavit..." Thus the one-year period for presenting the Petitioner's claims of having been convicted through the knowing use of fake evidence must be taken as either 30 July 2014, or

10 August 2014. (Mr. Kim Williams submitted 2 Declarations.)

The Petitioner presented these claims on to the District Court on 11 June 2014, well within the one-year minimum statute of limitations. (Dkt. no. 10) (Exhibit I-1)

(2) The Petitioner's claim of Actual Innocence for reason of his conviction having been obtained through the knowing use of fake evidence should not be denied for procedural considerations regardless of its "timeliness."

The Supreme Court has ruled in Perkins that "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 cause for the procedural default." [Perkins, quoting Murray v. Carrier, 477 U.S. 478]. The Supreme Court stated in Perkins, "a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims on the merits not withstanding the existence of a bar to relief." "This rule of fundamental miscarriage of justice exception is grounded in the 'equitable discretion' of habeas corpus to see that federal constitutional errors do not result in the incarceration of innocent persons.. [Perkins quoting Herrera v. Collins, 506 U.S. 390]. Furthermore, "The time limits apply to the typical case in which no allegation of actual innocence is made" [Perkins] This Petitioner has alleged actual innocence.

There are no "second prongs" for false evi-dence claims, as, e.g., for I.A.C. claims under Strickland, nor requirements that a petitioner argue of what a jury might have done, or could have done, or that such evidence ren-dered lack of confidence in the verdict, or any such considerations. The words of Justice Stewart Potter, quoted above, state the matter clearly: "This court cannot tolerate a state conviction based on false evidence" [Miller v. Pate] Period. There admit no qualifying considerations about jury considerations, or "harmless error" considerations, or anything.

The Supreme Court has ruled further, consistently with the Miller case, "Certain constitutional rights are not, & should not be, subject to "harmless error" analysis because those rights protect important values that are unrelated to the truth-seeking function of the trial." [Arizona v. Fulminante, 499 U.S. 279, quoting Rose v. Clark 478 U.S. 587]

As Chief Justice Warren stated in the

case of Napue v. Illinois, the Supreme Court will not consider ..."whether even a single juror might have been influenced" by the false evidence. [Napue v. Illinois, 360 U.S. 264 (1959)].

The toxic effect upon the jurors was not at all a consequence of the contents of the DVD, false evidence. The most damaging effect of that false evidence was its use to justify the poisonously wrong jury instructions that Kenney could be considered the "initial aggressor," or as having "contrived the affray," or that the affray was one of "mutual combat." Indeed, the District Court demonstrates this poisonous effect herself when she opined that "...the DVD bolstered the prosecution's claim that the defendant was the initial aggressor & was therefore probative of defendant's guilt on the charge of murder & on his inability to claim self-defense."

A synopsis of the filings concerning the "timeliness" of the petitioner's claims of false evidence:

(1) Discovery of false evidence: 30 July 2013
(2) Lodging of claim with District Court: 11 June 2014 (Dkt no. 10)
(3) Filing of First Amended Petition: 2 Feb 2015 (Dkt no. 20)

II. To the Question, can a Federal court, in a habeas corpus proceeding, deny access to the court to an indigent prisoner who has timely claimed actual innocence for reason of newly-discovered evidence of mental disorder, but has been denied the needed assistance of counsel with discovery power:

The answer to this question is, again, a resounding, "NO". The federal Rules of Procedure for the Federal Courts determining the appointment of counsel in Federal Habeas Corpus proceedings, particularly but not restricted by, Rules 8(c) & 6(a) governing 2254 proceedings, state that courts "must appoint counsel if appointment is necessary to ensure effective use of discovery."

In the following paragraphs, will be set out the highly technical, medical facts which were, & are, very important issues relevant to the petitioner's actual innocence & which he has been wrongly denied chance to present because he was denied the assistance of counsel.

The petitioner's case was all about state of mind, both his & also that of the assailants', Mel & Elizabeth Grimes.

This issue involves newly-discovered evi-dence & the erroneous dismissal of same, also for improper claims of untimeliness. The facts concerning the timeliness of the Peti-tioner's claims of false evidence, & the synop-sis of their filing with the District Court, hold identically for the petitioner's claims of actual innocence for reason of the deter-minative effects of the mental disorder of Post-traumatic Stress Disorder ["P.T.S.D.].

In the Summer of 2013 the Petitioner learned that he was suffering from P.T.S.D. caused by his combat experiences during the Korean War, & that he had been diagnosed as such twice, independently, in June & October of 2005, approximately 17 & 14 months prior to the fatal shooting affray for which he has been convicted. He was never informed that he suffers from P.T.S.D. At the time of the Korean War, P.T.S.D. was unknown among Americans.

P.T.S.D. is a legally defined Disorder under the California Penal Code, similarly as epilepsy or involuntary intoxication. Under its subdivision 4 is stated "all persons are capable of committing crimes except those belonging to the following classes:— four, persons who committed the act charged without being conscious thereof."

The effects of the hyper-accelerated startle response symptomatic of P.T.S.D. are now well known among medical specialist working with that affliction. Such are highly important in homicide trials in which a P.T.S.D. sufferer has been caught suddenly & unexpectedly in a violent, threatening incident.

This petitioner is largely ignorant of such technical matters. It is impossible for any pri-soner to carry out the medical examination (on himself!), or to analyze such. Even less is he capable of presenting such as an effective forensic argument. Appointment of counsel is necessary to carry out even a minimally ef-fective use of discovery & presentation.

This petitioner requested the appointment of counsel to assist him in discovery & to prepare his petition 6 times. [Dkt. 18, 25, 34, 61, 67, 73]. The District Court refused each request, typi-cally with such words as "his prison-assistant has filed a competent petition."

The petitioner was prevented from present-ing the facts & the legal arguments related to his affliction of P.T.S.D. by the refusal of the District Court to appoint counsel to assist him. California's "diminished actual-ity" statutes allow the triers of fact to consi-der a defendant's Disorder in assessing whether he actually harbored a specific intent or other mental state element.

This petitioner has been denied the right to present his newly-discovered evidence of mental Disorder, & to have the full significance of that Disorder weighed in the balance for the triers of facts, & the District Court in his habeas corpus proceedings, by the disdain of the District Court for the Federal rules of procedure in habeas corpus proceedings, specifically rules 6(a) & 8(c).

The Federal rule which requires that an indigent, pro se petitioner be appointed counsel when the use of discovery requires it, is as crucial to a habeas corpus petitioner as is the requirement that counsel be appointed for every indigent defendant in every criminal trial.

When the District Court denied this petitioner appointment of counsel for the presentation of the legal consequences of his newly-discovered evidence of the mental Disorder of P.T.S.D., serious, fundamental error was committed.

The records of the newly-discovered evidence are appended as Exhibits II-1 through

II-(7).

III. To the Question, can a federal court in a habeas corpus proceeding, deny an incarcerated prison's claims, based on a Motion filed by the Respondent, despite knowing & having evidence in hand that the Respondent had willfully withheld knowledge of such Motion, & that the Petitioner had had no opportunity to answer such Motion; & the court refused the Petitioner's Request for Reconsideration after he discovered the existence of the Respondent's Motion for Dismissal?

The answer to this question is again a resounding "NO".

Every state & federal rules require that every filing, of every & any sort, be sent in full copy, to the adversarial party, in every sort of judicial proceeding, including obviously habeas corpus proceedings.

This Petitioner now respectfully asks any judicial Officer reading this Petition to steel himself or herself to recognize that he or she must address the distasteful subjects of prosecutorial misconduct &

judicial mischief in allowing same.

This Question is directly part of the issues set forth related to Questions I & II & to the Petitioner's Actual Innocence claims of having been convicted through the knowing use of false evidence & of being denied his rights to have presented the influence of his mental Disorder upon the outcome of the fatal affray which occasioned his conviction.

This Petitioner has been denied his constitutional rights to present & have reviewed these issues through the too-common procedural misconduct of "sewer-service". The state Respondent persistently & intentionally filed Motions & other items with the District Court while witholding all notices of same to the petitioner.

The full, tedious details of the Respondent's persistent use of "sewer-service" are set out on pages 7-12 of his Request for Certificate of Appealability, [Dkt. no. 99], & is herewith included by reference. The intent & persistence of the state Respondent is described in the Declarations of the Petitioner & of Mrs. Christine Williams, Exhibits II-(9) & II-(10). The Petitioner was able to obtain a copy of the Respondent's Answer to Show Cause by filing an interlocutory Motion with the 9th Cir-cuit Court of Appeals requesting a Writ of Mandate. [Dkt. no. 57]

This Petitioner's claims of false evidence, & of P.T.S.D., & of Actual Innocence, were claimed by the state Respondent in a Reply Motion in which, for the first time, she claimed "untime-lines" based upon the A.E.D.P. deadline(s) set by the date of final conviction, while disregarding the facts that both claims were based upon newly-discovered evidence. [Dkt. no. 28]. This was the first time that the Respondent tried to invoke the basic A.E.D.P.A. deadline.

The Respondent's Motion to have the Peti-tioner's claims of having been convicted ~~on~~ through the knowing use of false evidence, & of being actually innocent by reason of effec-tive mental Disorder were ~~[illegible]~~ dismissed without this Petitioner's having been allowed to answer the wrongful assertions which involved "untimeliness" & the incorrect appli-cation of the A.E.D.P.A. schedule.

When the District Court dismissed this petitioner's Motion for Reconsideration, it had then in hand evidence that the Respon-dent had not mailed any copy of her

Reply-Motion, or anything else, to this Petitioner in the form of a complete copy of the prison mail log.

The Petitioner had previously filed no fewer than three (3) formal Requests asking that the District Court compel the Respondent to mail him copies of her filings. [Dkt no 23, 49, 56]. The District Court did nothing.

IV. To the Question, can a federal court in a habeas corpus proceeding, disregard a failure of a state court to hold an evidentiary hearing when, by state law, it is required to do so, & thereafter to treat the state court's one-word denial as if it were a reasoned decision, to the prejudice of the Petitioner:

The California Supreme Court denied this Petitioner's claim of having been convicted through the knowing use of false evidence summarily without granting the evidentiary hearing that the Petitioner requested.

Under California law, in considering a state habeas corpus petition containing specific factual allegations that are uncontradicted by the state (i.e., the situation here), the question for the state court was whether those allega-

-tions sufficed to establish a prima facie case. [In re Harris, 5 Cal.4th 813, 21 Cal. Rptr. 2d 373, 855 P.2d 391, 397 (1993)] ("One seeking relief on habeas corpus need only file a petition for the writ alleging facts which, if true, would entitle the petitioner to relief.") The California Supreme Court was required to grant an evidentiary hearing. ("If the court finds the factual allegations, taken as true, establish a prima facie case for relief, the court will issue an Order to show cause." [Duvall, 37 Cal. Rptr. 2d 259, 886 P.2d at 1258]

Thus where a court issues a summary denial in lieu of holding an evidentiary hearing on a prima facie claim of constitutional error, this amounts to an unreasonable application of the facts prohibited by subsection (d)(2) of the 2254 rules. [Cannedy v. Adams, 706 F.3d 1148, 1160-61; Taylor v. Maddox, 366 F.3d 992 (9th Cir. 2004)]

In denying the Petitioner's request for an evidentiary hearing, the California Supreme Court failed in its duty to grant a hearing where Petitioner has established a prima facie case for habeas relief. Summarized here are the key elements ~~&~~ which establish a prima facie case for relief:

(1) The DVD which figured so prominently in

the prosecution's arguments about the Petitioner's claimed state-of-mind, pre-planning, & training for violent combat, & which was claimed to have been found in the Petitioner's house on the date of the shooting, was not in his house then (or before). (Sheriff's investigation Report.)

(2) This same DVD was claimed to have been found nine (9) days later, in the same small drawer which had been previously searched & inventoried, & in which no such DVD was present. (Sheriff's investigation Report.)

(3) The DVD had no finger-prints, or DNA, from the Petitioner on itself or its case. (Forensic police laboratory Report.)

(4) This particular DVD is manufactured, only, by a small company which sells, only, direct (with no distributors) through the mails, & maintains careful customer records, & had never sold it to the Petitioner. [Declaration Williams]

(5) The Petitioner has sworn under penalty of perjury that he has never possessed, held, seen, or heard that DVD.

The state has never countered any of these factual allegations of false evidence. Nevertheless, the California Supreme Court merely issued a one-word Denial order, which shut off any further state habeas corpus proceedings & fore-

-closed any chance for this Petitioner to develope further & to prove up these facts.

These facts are uncontradicted by the state. Taken together, these facts establish a prima facie case of the use of false evidence. At the least, this Petitioner was entitled to an evidenciary hearing, but the state courts never afforded him the hearing he demanded.

Pursuant to well-established law summarized under "Relevant Legal Standards", supra, this amounts to an "unreasonable determination of the facts" by the state court, which warrants relief on federal habeas corpus.

## Reasons for Granting Review.

I. A conviction based upon a knowing use of false evidence is a grave violation of a defendant's Constitutional Rights as well as a decision that was contrary to clearly established Supreme Court law. [Napue v. Illinois; Miller v. Pate] It is also repugnant to every jurist.

II. A denial of review of newly-discovered evidence supporting claims of Actual Innocence on procedural grounds, such as "untimeliness" is a decision contrary to clearly established Supreme Court law. [McQuiggin v. Perkins.]

III. A denial of review of newly-discovered evidence, specifically such of the use of false evidence, or of the effects of a diagnosed Disorder upon a state-of-mind, when that denial has been obtained by the state through the procedural improprieties, specifically such by witholding Notices, Motions, & other filings, & asserting information known to be incorrect, is a decision ~~based upon~~ contrary to clearly established Federal law.

IV The denial of a full evidentiary hearing upon presentation of prima facie evidence in a the California State Supreme Court in a habeas corpus proceeding, with an un-considered one-word denial, was an "unreasonable determination of the facts" by the state court & compels federal habeas review. [Cannady v. Adams; Taylor v. Maddox]

Conclusion.

This Petitioner has been convicted through the knowing use of false evidence. The state has no evidence whatever that he ever planned or pre-meditated the shooting of Mel or Elizabeth Grima, & there exists much evidence involving the forensic "facts on the ground" which support the Petitioner's testimony that he was lured into a violent confrontation & attacked.

The Petitioner discovered, years after he was convicted, that he is afflicted with a mental Disorder of powerful significance in circumstances of sudden personal violence or attack.

The Petitioner has presented evidence of these facts, timely, but has been denied review through acts of impropriety in the conduct of habeas corpus proceedings of a state prisoner.

The matters brought forth in this petition fairly shout for thorough review.

The court should grant review & Certiorari that these constitutional errors be corrected.

This Petitioner respectfully requests that -

(1) This Court grant Certiorari,
(2) Appoint counsel to assist him, &
(3) Grant other relief as deemed appropri-
-ate by the court.

I affirm that the above is true & correct,

John F. Kenny
John F. Kenney
Vacaville, California
23 July 2019
in pro se
in forma pauperis.