No. 19-5851

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FELIX O. BROWN JR. - PETITIONER, Pro se

vs.

L. EPPINGER- RESPONDENT, Warden; et. al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FELIX O. BROWN JR. #312-676

GRAFTON CORRECTIONAL INSTITUTION

2500 SOUTH AVON-BELDEN ROAD

GRAFTON, OHIO, 44044

QUESTIONS PRESENTED FOR REVIEW

1. Is there a federal procedural rule, written or unwritten, which permits a United States Court of Appeals and/or a United States District Court to simply refuse to acknowledge and determine a presentation of cause & prejudice -- presented within a Merit (Traverse) Brief to address a procedural default: merely because the cause & prejudice argument(s) were *not* presented prior to the merits of the constitutional claim, in a specific chronological order? Or is it sufficient for a 2254 habeas petitioner, *proceeding pro se*, to simply ensure that their' cause and prejudice presentation is separate entitled and distinguishably raised *within the pages dedicated to that specific Ground for relief*?

2. Does a United States Federal District Court Judge display pervasive bias where it has been shown that s/he *knowingly* failed to adhere to well established federal law, in her/his refusal to reach the merits of a properly presented federal constitutional claim?

3. Can a 2254 habeas petitioner's federal constitutional claim, properly presented within his habeas petition and traverse, be denied a merit determination *simply based on the passage of time*: where it is shown that the federal district court, during the habeas and post-habeas proceedings has: (a) continuously refused to acknowledge and thereby evaluate the adequacy of the cause and prejudice presentation – *as presented within Petitioner's Traverse Brief* – to overcome the procedural bar; and (b) misled Petitioner into believing that said cause and prejudice presentation was simply insufficient to overcome the procedural bar?

LIST OF PARTIES

1. L. Eppinger, Warden; Grafton Corr. Inst.
2. Federal District Court Judge: Donald C. Nugent – Northern District of Ohio

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APPENDIX C - United States District Court, Northern District of Ohio, 12/14/2018 ORDER

APPENDIX D - United States Sixth Circuit Court of Appeals 07/23/2015 ORDER.

TABLE OF AUTHORITIES CITED

STATUES AND RULES

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.

OPINION BELOW

For the cases from **federal courts:**

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

The opinion/order of the United States District Court appears at Appendix B and Appendix C to the petition and is *also* unpublished.

The Ohio Court of Common Pleas
Trumbull County, Ohio

Case No. 95 T 127

Petitioner's convictions for one count of murder with a firearm specification, upon which he is currently serving a sentence of 15 years to life imprisonment, with three actual incarceration, with three years actual incarceration to be served prior to and consecutive with the principle sentence on that count, and count one of having a weapon while under a disability, upon which he is currently serving a sentence of 1 ½ years incarceration, to be served concurrently with the sentence on the primary charge: as a result of being found guilty by a jury on September 29, 1995.

Ohio Court of Appeals
Eleventh Appellate District

Case Nos. 95-T-5349 and 98-T-0061

Ohio Supreme Court

Case No. 2000-0929 (Discretionary Appeal; Claimed Appeal of Right)
Case No.2001-0245(Appeal from App.R. 26(B) Application)

On October 31, Petitioner filed a timely notice of direct appeal of his conviction to the Ohio Eleventh District Court of Appeals, but that appeal was dismissed for want of prosecution on June 10, 1996.

On September 9, 1996 Petitioner, represented by new counsel, filed an application to reopen his appeal in which he alleged that he had been denied effective assistance of appellate counsel by reason of previous counsel's failure to file an appeal brief. That application was granted on October 30, 1996 and, after finding that the Petitioner was "deprived of effective assistance of appellate counsel [,]" the appeal was reinstated.

On April 3, 2000, the state appellate court affirmed the trial court's judgment of conviction and sentence[1].

On May 17, 2000, petitioner appealed the foregoing decision to the Ohio Supreme Court.

On June 30, 2000 – file stamped 07/07/2000—Petitioner filed *pro se* a application to reopen his direct appeal, therein he asserted that he had been denied the effective assistance of appellate counsel for failure to raise claims involving the trial court's refusal to give a accident instruction (Petitioner's sole theory of defense); and trial counsel's failure to object to the trial court's refusal to instruct the jury on said.

[1] *State v. Brown,* 2000WL522339(Ohio Ct. App. Mar. 31, 2000)

On December 27, 2000, the state appellate court denied petitioner's application to reopen his appeal, finding it to be fatally deficient as a consequence of his failure to show good cause for filing such application four days past the deadline.

On January 9, 2001 petitioner's pro se motion for reconsideration was filed, where therein Petitioner argued, and provided irrefutable documented evidence, that he in fact surrendered his App. R. 26(B) application over to prison authorities with sufficient time remaining for said R. 26(B) to have reached it destination and been timely filed by the clerk of courts in the normal course of events. On March 5, 2001, the state appellate court overruled petitioner's motion for reconsideration.

Petitioner, proceeding pro se, then timely filed a Notice of Appeal and Memorandum in Support of Jurisdiction with the Ohio Supreme Court, where therein Petitioner raised the two proceeding constitutional claims under Proposition of Law One.

On April 4, 2001, the Ohio Supreme Court declined to accept jurisdiction: holding the appeal as not involving any substantial constitutional question.

United States District Court, Northern District of Ohio; Eastern Division

Habeas Corpus Case No 1:01CV 02476

Document No.

1 Petitioner's 28 USC 2254 For Writ Of Habeas Corpus; Filed Pro se, on 10/29/2001

2 Random Assignment To Magistrate Judge William Baughman, on 10/29/2001

3 Administrative Track DCM Initial Order, Chief Judge Paul R. Matia; entered: 10/30/2001

4 Magistrate Judge's Initial Order To The Ohio Attorney General: To Show Cause...; entered:10/31/2001

5 Assistant Attorney General, Bruce Horrigan, Motion For Extension of Time Until 12/21/2001 To File Answer And Return Of Writ; entered:11/21/2001

6 Magistrate Judge Baughman's Order Granting Motion For Extension of Time Until 112/21/2001; entered:11/26/2001

7 Return Of Writ Filed By Asst. Atty. Gen. Horrigan; entered:12/21/2001

8 Appendix To Return of Writ Filed By Margaret Magley; entered: 12/26/2001

9 Notice of Filing of Transcript Of Proceedings Suppression Hearing Dated 09/25/1995 Filed By Margret Magley; entered 12/26/2001

10 Notice of Transcript of Proceedings Jury Trial 09/25/95-10/2/95 Filed By Margret Magley; entered: 12/26/2001

11 Notice of Filing Partial Transcript of Proceeding Volume II, Jury Trial Dated 9/27/95 Filed By Margret Magley; entered: 12/26/2001

12 Notice of Filings of Transcript of Proceedings Hearing On Remand Dated 7/8/99 Filed By Margret Magley; entered: 12/26/2001

13 Order Referring Case To Magistrate Judge Baughman For Report And Recommendation, Case Assigned To The Administrative Track, Judge Donald C. Nugent; entered 01/02/2002

14 Petitioner's Motion For To Expand Record; entered 01/10/2002

15 Petitioner's Motion For Extension Of Time Until 02/15/2002 To File Traverse Brief; entered 01/10/2002

Magistrate Judge Baughman's Order (NON-DOCUMENT) Granting Petitioner's Motion for Extension of Time until 02/15/2002; entered 01/11/2002

16 Petitioner's Traverse (Compete 88 Page Document, With Attachments: Exhibits); entered 02/15/2002

17 Respondent's Motion To Strike Traverse and/or Order Petitioner To Properly Serve Respondent; entered 02/20/2002

18 Magistrate Judge's Order Denying Motion To Strike, Petitioner Ordered To Immediately Serve Complete Copy Upon Counsel For Respondent; entered 02/21/2002

19 Respondent's Motion To Withdraw Previously Filed Motion To Strike (Where It Was Discovered That Petitioner Had In Fact Proper Served Traverse Upon Respondent); entered 02/21/2002

Magistrate Judge's Order Denying as Mute Respondent's Motion to Withdraw Document; Entered 02/21/2002

20 Petitioner's Motion For Leave To Supplement Petitioner's Traverse To Return Of Writ With Exhibit 1; entered 02/27/2002

Magistrate Judge's Order Granting Petitioner's Motion to Supplement; entered 02/28/2002

21 Supplemental Inclusion To Traverse To Return Of Writ, filed by Petitioner; entered 03/12/2002

22 Petitioner's Certified Mail Receipt Returned; Served Office Of Ohio Attorney General On 11/05/2002; entered 03/13/2002

23 Petitioner's Motion To Expand The Record (Attachments:# Letters # Transcript Excerpts); entered 05/09/220

24 Magistrate Judge's Order Ordering That Respondent File Responses To Petitioner's Motion's Filed On 01/19/2002 And 05/09/ 2002 On or Before 06/03/2002; entered 05/14/2002

25 Respondent's Opposition To Petitioner's Motion To Expand The Record And Evidentiary Hearing; entered 05/29/2002

26 Magistrate Judge's Order Denying Petitioner's Motions To Expand The Record And Request For An Evidentiary Hearing; entered 05/31/2002

27 Certified Mail Receipt Returned Upon Petitioner; entered 06/05/2002

28 Petitioner's Motion To Alter/Amend Judgment Regarding Request For Evidentiary Hearing; entered 06/19/2002

29 District Court Judge Donald C. Nugent Marginal Order Denying Petitioner's Motion To Alter/Amend Judgment; entered 07/01/2002

30 Address Change Notice By Petitioner; entered 04/10/2003

31 Order Referring Case to Magistrate Judge David S. Perelman to Facilitate Efficient and Timely Administration of Justice. (The Referral To Magistrate Judge Baughman Is Withdrawn. Judge Paul R. Matia; entered 06/04/2003

32 Magistrate Judge Perelman's Report And Recommendation That The Petition Be Dismissed; entered 06/26/2003

33 Petitioner's Motion For A 10-Day Extension Of Time Until 07/24/2003 To File Objection To Report & Recommendation of Mag. Judge Perelman; entered 07/11/2003

34 Returned Mail (7/11/03 Marginal Entry Order) Addressed to Richard Brown Jr.; entered 07/29/2003

35 Petitioner's Objection To Mag. Judge Perelman's R&R; entered 07/29/2003

36 District Judge Nugent's Memorandum, Opinion Adopting Mag. Judge Perelman's Report & Recommendation And Denying Petitioner's Petition For A Writ Of Habeas Corpus; The

Court Further Certifies, Pursuant To 28:1915(A)(3), That An Appeal From This Decision Could Not Be Taken In Good Faith, And There Is No Basis Upon Which To Issue A Certificate Of Appealability. Entered 08/12/2003.

37 District Judge Nugent's Judgment, In Accordance With The Memorandum, Opinion, Denying Petitioner's Motion Pursuant To 28:2254; The Court Certifies, Pursuant To 1915(A)(3), That An Appeal From This Decision Could Not Be Taken In Good Faith, And There Is No Basis Upon Which To Issue A Certificate Of Appealability. Entered 08/12/2003.

38 Petitioner's Motion Pursuant To FRCP 59(A)(2) For A New Trial; Reargument Of Merits. Entered 08/28/2003

39 Petitioner's Motion Pursuant To FRCP 59 to Alter or Amend Judgment: Motion for Reargument. Entered 08/28/2003

40 Petitioner's Motion to Amend In Connection With Previously Filed FRCP 59 Motions. Entered 09/08/2003

41 Petitioner-Appellant's Notice of Appeal To the 6th Circuit Court of Appeals. Entered 09/11/2003

42 Judge Nugent's Marginal Order denying Petitioner's Motion for New Trial: "THE COURT HAS REVIEWED PETITIONER'S 'RE-ARGUMENT OF MERITS' AND FINDS NO BASIS TO ALTER OR AMEND ITS PREVIOUS JUDGMENT DENYING ORIGINAL PETITION." Entered 09/18/2003

43 Acknowledgment from the USCA for Sixth Circuit of Receipt of Notice of Appeal. Entered 09/23/2003; under USCA #03-4214.

44 Judge Nugent's Marginal Entry Order Denying Petitioner's Motion to Alter/Amend Judgment. Entered 09/26/2003

Certified Record On Appeal Sent To US Court Of Appeals For The Sixth Circuit. Entered 10/02/2003

45 Petitioner's Motion for Relief from Judgment Pursuant To Rule 60(B)[2]. Entered 10/03/2003

46 Judge Nugent's Marginal Entry Order Denying Petitioner's Motion for Relief: "COURT HAS CONDUCTED DE NOVO REVIEW AND FINDS NO REASON TO MODIFY ORDER OF 8/8/2003." Entered 10/09/2003

47 Acknowledgement from the USCA for Sixth Circuit Of Receipt Of Certified Record (Related Document(S) Notice Of Appeal)[USCA #03-4214]. Entered 10/28/2003

48 Petitioner's Amended Motion For Relief From Judgment Pursuit To R. 60(B)(1), and/or 60(B)(6). Entered 11/04/2003

49 Judge Nugent's Marginal Order Denying Petitioner's Amended Motion for Relief from Judgment. Entered 11/07/2003

50 True Copy Of Order From The USCA For The Sixth Circuit: Denying The Application For A Certificate Of Appealability As To The Notice Of Appeal. Entered 03/15/2004

51 Petitioner's Motion For Relief From Judgment Pursuit To FRCP R. 60(B)(3). Entered 04/13/2004

52 Judge Nugent's Marginal Order Denying Petitioner's R. 60(B)(3) Motion. Entered 05/04/2004

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[2] Please be aware that each and every one of Petitioner's post-habeas motions were exclusively to address the procedural default ruling of Petitioner's Ground Two for Relief.

53 Petitioner's Motion For Findings of Fact And Conclusions Of Law – In Relation To Marginal Order Denying The R. 60(B)(3) Motion. Entered 05/19/2004

54 Judge Nugent's Order Denying Petitioner's Motion To Clarify (I.E. Motion For Findings And Conclusions): "CONTRARY TO PETITIONER'S BELIEF 'ONLY A MARGINAL ORDER' IS A FULLY VALID ORDER OF THE COURT WITH SAME EFFECT AS A LONG WINDED EXPLANATION WITH ORDER ATTACHED. PETITIONER'S APPLICATION FOR FRCP 60(B)(3) RELIEF IS AND WAS TOTALLY DEVOID OF MERIT." Entered 06/01/2004

55 Petitioner's Notice of Appeal To the 6th Circuit Court of Appeals from the Marginal Order Of 5/4/04. Entered 06/08/2004

56 Petitioner's Request for a COA of The Denial of His R. 60(B) Denied. Entered 06/08/2004

57 Certificate of Service for NOA. Entered 06/17/2004

58 Judge Nugent's Order Denying Appellant's Request for COA for R. 60(B): "PRIOR FRCP 60(B) REQUEST FOR RELIEF WAS DENIED AS IT WAS WITHOUT MERIT. ALL ISSUES RAISED WERE PREVIOUSLY REVIEWED AND FOUND TO BE WITHOUT SUBSTANCE." Entered 06/17/2004

59 Acknowledgment from The USCA for Sixth Circuit of Receipt of Petitioner's NOA. (USCA # 04-3818); Entered 06/25/2004

60 True Copy of Order from The USCA for The Sixth Circuit: Denying Petitioner's Motion for COA. The Motion For Pauper Status Is Denied As Moot.(USCA # 04-3810) Entered 12/15/2004

61 Appeal Order from USCA for The Sixth Circuit: Denying Petitioner's Motion For an Order Authorizing The District Court To Consider A Second Petition For Habeas Corpus Relief under 28 U.S.C. 2254.(USCA # 05-3949) Entered 12/13/2005

62 Petitioner's Motion to Remove Judge Nugent from the Case. Entered 03/10/2006

63 Petitioner's Motion to Reopen Case for Purpose of Holding Evidentiary Hearing. Filed 03/10/2006

64 Judge Nugent's Marginal Order Denying Motion to Reopen Case. Entered 03/14/2006

65 Petitioner's Motion to Supplement Motion to Remove/Recuse Judge Nugent. Entered 03/24/2006

66 Petitioner's Motion To Reopen The Time To File An Appeal In Accordance With FRAP 4(A)(6). Entered 05/08/2006

67 Judge Nugent's Marginal Order Denying Petitioner's Motion for Order to Reopen the Time to File an Appeal. Entered 05/23/2006

68 Petitioner's NOA To the 6th Circuit Court of Appeals from the Marginal Order Of 5/23/06. Entered 06/07/2006

69 Acknowledgment from the USCA for the Sixth Circuit of Receipt of Petitioner's NOA. (USCA # 06-3803) Entered 06/15/2006

70 Judge Nugent's Order Denying Petitioner a COA From The 05/23/2006 Order. Entered 09/28/2006

71 True Copy Of Order From The USCA For The Sixth Circuit, Denying Petitioner Application For A COA. (USCA Case No.06-3803) Entered 01/31/2007

72 Appeal Order From USCA For The Sixth Circuit: Denying Petitioner Permission To File a second 2254 Petition In District Court. (USCA # 07-3681) Entered 11/01/2007

73 Petitioner's Motion And Affidavit For Relief From Judgment In Accordance With FRCP 60(B) In View Of The Exceptional Circumstances Involving The Enclosed Issue; Entered 11/29/2007

Judge Nugent's Marginal Order Denying Petitioner's R. 60(B) Motion; Entered 12/04/2007

74 Petitioner's Motion For Findings Of Fact And Conclusions Of Law; Entered 12/14/2007

75 Petitioner's NOA to The 6th Circuit Court Of Appeals From The Order Of 12/04/2007; Entered 12/14/2007

Judge Nugent's Order **(non-document)** Denying Petitioner's Motion for Findings of Fact and Conclusions of Law. "A REVIEW OF ALL FILINGS IN THIS CASE, INCLUDING ALL ORDERS ISSUED BY COURT OF APPEALS SUFFICIENTLY EVIDENCE THERE IS NO MERIT TO PETITIONER'S CLAIM AND ARE ADOPTED IN THIS DENIAL." Entered: 12/20/2007

76 Petitioner's Notice of Change of Respondent; Entered: 01/10/2008

77 Petitioner's "MOTION FOR CERTIFICATE OF APPEALABILITY IN DIRECT REGARD TO 12/04/07 NON DOCUMENT ORDER DENYING RULE 60(B)(6) MOTION; Entered: 01/10/2008

78 Acknowledgment from the USCA for the Sixth Circuit of Receipt of Notice Of Appeal; (USCA Case No.08-3011). Entered: 01/15/2008

Judge Nugent's Order **(non-document)** Denying Petitioner's Motion for a COA; Entered: 01/15/2008

79 True Copy Of Mandate From The USCA For The Sixth Circuit Denying Petitioner's Application For A COA, Under USCA Case No.08-3011; Entered: 07/09/2008.

80 Appeal Remark From United States Supreme Court: Petitioner's Petition For A Writ Of Certiorari Was Filed On 03/05/2009 And Placed On The Docket 04/10/09 As No. 08-9733; Entered: 04/15/2009

81 Appeal Order From US Supreme Court: The Petition For A Writ Of Certiorari Is Denied Re (No.08-9733); Entered 05/27/2009

82 Appeal Order From The US Supreme Court: The Petition For Rehearing Is Denied Re (No.08-9733) Entered: 09/10/2009

83 Petitioner's Notice of Change of Name of Respondent and Mailing Address. Entered: 06/05/2013

84 Petitioner's Motion To Reopen Habeas Proceeding Pursuant To Civil Rules Of Procedure 60(B); Entered 07/22/2013

85 Judge Nugent's Order Denying Petitioner's Rule 60(B) Motion; Entered 09/06/2013

86 Petitioner's Motion For Leave To Amend Pending R. 60 Motion; Entered 09/09/2013

87 Judge Nugent's Marginal Entry Order Denying Petitioner's Motion To Amend Rule 60(B) Motion; Entered:09/11/2013

88 Petitioner's NOA To The Sixth Circuit Court of Appeals Form The Order Of 09/05/2013, Marginal Entry Order Of 09/11/2013; Entered 09/30/2013

89 Petitioner's Motion For A COA; Entered: 09/30/2013

90 Acknowledgment From The USCA For The Sixth Circuit of Receipt of NOA; Entered 10/08/2013

91 Judge Nugent's "ORDER THIS HEREBY CERTIES THAT, PURSUANT TO 28 U.S.C. 1915(A)(3), AN APPEAL FROM ITS SEPTEMBER 5, 2013 ORDER DENYING PETITIONER'S MOTION TO REOPEN FILED PURSUANT TO FED. R. CIV.P. 60(B) COULD NOT BE TAKED IN FAITH, AND THERE IS NO BASIS UPON WHICH TO ISSUE A CERTIFICATE OF APPEALABILITY. FURTHER, THIS COURT HEREBY CERTIFIES THAT, PURSUANT TO 28 U.S.C. 1915(A)(3), AN APPEAL FROM ITS SEPTEMBER 11, 2013 ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO AMEND HIS FED. R. CIV. P. 60(B) MOTION COULD NOT BE TAKEN IN GOOD FAITH, AND THERE IS NO BASIS UPON WHICH TO ISSUE A CERTIFICATE OF APPEALABILTY"; entered: 10/11/2013

92 True Copy of Order From The USA For The Sixth Circuit: Granting The Motion To Amend The Application For A COA, The Application As Amended Is Denied, And The Motion To Proceed In Forma Pauperis Is Denied As Moot; (USCA No.# 13-4156) Entered: 03/29/2014

93 Petitioner's Motion For Relief From Judgment; Entered: 11/12/2014

94 Judge Nugent's Marginal Entry Order denying Petitioner's Motion for Relief from Judgment: "THIS CASE AND ALL ISSUES PRESENTED HAVE BEEN EXHAUSTIVELY ANALYZED AND RULED UPON IN PRIOR RULINGS THROUGHOUT THE PAST 13 YEARS AND THIS MOTION PRESENTS NO BASIS UPON WHICH ANY OF THE REQUESTED RELIEF SHOULD OR COULD BE GRANTED." Entered: 02/11/2015

95 Petitioner's NOA To The Sixth Circuit Court of Appeals From The Marginal Order of 02/11/2015; Entered: 03/04/2015

96 Acknowledgment From The USCA For The Sixth Circuit of Receipt Of NOA; (USCA # 15-3198) Entered: 03/10/2015

97 Petitioner's Motion for Extension of Time until 04/18/15 To File Leave to Proceed on Appeal in Forma Pauperis. Entered 03/16/2015

98 Judge Nugent's Order Certifying Pursuant To 28: 1915(A)(3), That An Appeal Form The 2/11/15 Order Could Not Be Taken In Good Faith, And There Is No Basis Upon Which To Issue A COA. Entered 07/24/2015

99 True Copy Of The Order From The USCA For The Sixth Circuit: Denying The Application For A Certificate Of Appealability. (USCA # 15-3198) Entered 07/24/2015

100 Appeal Remark from U.S. Supreme Court: The Petition for A Writ of Certiorari Was Filed On 01/05/2016 and Placed On the Docket 01/13/16 As No. 15-7708. Entered 01/19/2016

101 Appeal Order From Us Supreme Court: The Petition For A Writ Of Certiorari Is Denied. Entered 03/25/2016

102 Petitioner's Notice of Change of Respondent and Change of Address. Entered 09/05/2018

103 Appeal Remark From USCA For The Sixth Circuit: A Petition For A Writ of Mandamus Filed By Felix Brown; (USCA # 18-3921)

104 Petitioner's Notice Of Motion To Recuse District Court Judge Donald C. Nugent And Motion Requesting That Judge Nugent Disqualify Himself From Entertaining and/or Ruling Upon Any Further Matters Associated With The Above Enumerated

Case.(Attachments: 1 Appendix A And B, Traverse And Objection To Report And Recommendation). Entered 10/02/2018

105 Judge Nugent's Marginal Entry Order Denying Motion to Disqualify Himself. Entered 10/04/2018

106 Filing Error: Wrong Court. Courtesy Copy Only. Motion to Amend Writ of Mandamus, And Motion to Hold Writ Of Mandamus In Abeyance Filed By Felix Brown. Modified Text On 10/17/2018. Entered 10/16/2018

107 Appeal Order From USCA For The Sixth Circuit: Granting The Motion By Petitioner To Voluntarily Dismiss The Petition For Writ Of Mandamus; (USCA # 18-3921). Entered 10/22/2018

108 Petitioner's Motion and Affidavit Requesting Judge Nugent to Disqualify Himself. Entered 12/17/2018

109 Petitioner's Motion to Have Attached Motion, Motion for Relief from Judgment Held in Abeyance. Entered 12/17/2018

110 Judge Nugent's Marginal Entry Order Denying Petitioner's Motion to Disqualify Himself: "There Is No Basis In Law Or Fact To Warrant Recusal." (Related Doc# 108) Entered 01/10/2019

111 Judge Nugent's Marginal Entry Order Denying Petitioner's Motion to Have Motion for Relief from Judgment Held in Abeyance. (Related Doc #109) Entered 1/10/2019

General Docket

United States Court of Appeals for the Sixth Circuit

USCA Case No.19-3090

1. Petitioner's Petition for Writ of Mandamus filed. Received 01/28/2019. Entered 02/04/2019
2. The case manager assigned for this case: Robin L. Johnson. Entered 02/04/2019
3. Appellant Motion to proceed in forma pauperis. Entered 02/04/2019
4. Petitioner's trust account statement filed. Entered 02/04/2019
5. Petitioner's CORRESPONDENCE: requesting information on Mandamus. Entered 02/11/2019
6. Petitioner's CORRESPONDENCE: requesting docket summary. Entered 06/03/2019
7. True copy of the order from the USCA for the Sixth Circuit: Denying the Petitioner's petition for a writ of mandamus. The panel for the USCA for the Sixth Circuit pronounced in part: "Brown argues that the district court judge 'had a duty to recuse: upon a clear showing of his pervasive biasness, antagonism, and manifest disregard of the law,' but a review of the record below indicate no 'biasness, antagonism, and manifest disregard of the law." Entered 06/10/2019
8. Petition's motion requesting a 15-day extension of time to file for a Petition for Rehearing, with consideration for rehearing En Banc[3]. Filed 06/20/2019

[3] Up to and including 07/09/2019.

9. True copy of the order from the USCA for the Sixth Circuit: Denying the Petitioner's a motion requesting a 14-day extension of time to file for a Petition for Rehearing, with consideration for rehearing En Banc. Entered 07/08/2019

The United States Court of Appeals for the Sixth Circuit's, 06/10/2019 opinion denying Petitioner's petition for a Writ of Mandamus is attached as Appendix A.

The United States Court of Appeals for the Sixth Circuit's, 07/23/2015 opinion denying Petitioner's Motion for Certificate of Appealabilty – attempting to appeal the federal district courts' denial of his FRCP 60(b)(4) motion; is attached as Appendix B.

(Petitioner, respectfully, brings this Honorable Court's attention to the fact that this "ORDER" does not contain the jurist(s) name(s) or signature(s) of whom rendered said decision.)

Moreover, please be aware that all, *every single one*, of the above denials/opinions by the United States District Court *and* the United States Court of Appeals: ***are unpublished rulings***.

Statement of Jurisdiction

The United States Court of Appeals, for the Sixth Circuit, denied Petitioner- Relator's Application for A Writ of Mandamus on 06/10/2019. Thus, jurisdiction in this Court is timely and properly requested: pursuant to 28 U.S.C.§ 1254(1).

Statues Involved: Constitutional, Statutory, and Other Provisions

This case involves:

1. U.S. Const. art. I, § 9, cl. 2 (The Illegal suspension of the great writ of habeas corpus);
2. 28 U.S.C.S. § 144, 28 U.S.C.S. § 455(a) (Motion to recuse);
3. U.S. Const. Amend. 5 (Due Process Clause)
4. Federal Rules of Civil Procedure, Rules 60(d)(1) and/or 60(d)(3).
5. Federal Rules of Civil Procedure, Rule 15(c)(1)(B)(the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading) .
6. Rule 8 of the Rules Governing 28 U.S.C. § 2254
7. 18 U.S.C. § 3006A.

Statement of the Case

Felix O. Brown Jr. is an Ohio prisoner serving an 18 year to life prison sentence after being convicted, by a jury, of one count of murder, with a firearm specification; and one count of having a weapon while under a disability in 1995. This judgment was affirmed by the Ohio Court of Appeals for the Eleventh Appellate District on 04/03/2000. Petitioner, proceeding pro se, then prepared and filed an application to reopen his direct appeal pursuant to Ohio Appellate Rule 26(B) –raising therein ineffective-assistance-of-appellate-counsel.[4] Petitioner's R.26(B) application had to be filed 07/03/2000 with the Trumbull County Clerk of Court to had be

[4] Several of the ineffective-assistance-of appellate-counsel raised therein was addressed within the 2254 petition; under Ground Two for Relief. That is, failure to assign as error: (1) the trial court's refusal to give a proposed theory of defense instruction on accident to the jury; and (2) trial counsel's failure to object to the trial court's refusal to give said.

deemed timely; however, as a direct result of the delayed mailing of such by prison authorities said R.26 (B) application was not filed until 07/07/2000 – four (4) days beyond the ninety day deadline. On 12/27/2000, the state appellate court found petitioner's reopening application untimely and overruled the application.

On 01/09/2001, Petitioner, proceeding pro se, filed a motion for reconsideration in regard to the court of appeals' 12/27/2000 ruling. On 03/05/2001, the state appellate court overruled Petitioner's motion for reconsideration[5].

On 02/01/2001, Petitioner, filed a Notice of Appeal and Memorandum in Support of Jurisdiction with the Supreme Court of Ohio, asserting therein Two Proposition of Law –under the first Petitioner raised the ineffective assistance of counsel claims addressed under habeas Ground Two; and under the second, the claim "the confiscation and/or seizure of appellant's R.26(B) application by prison personnel shortly before the filing deadline justified equitable tolling of the ninety-day limitation period..." was raised.

On 04/04/2001 the Ohio Supreme Court dismissed the appeal as not involving any substantial constitutional question.

Petitioner then on 10/29/2001 filed his 28 U.S.C. § 2254 Habeas Petition. Case No. 1:01 CV 2476. (Doc. 1) On 21/21/2001, the Respondent filed their' Return of Writ; asserting, therein,

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[5] And overruled said in spite of Petitioner provided documented proof – i.e., copies of cash withdraw slips; a copy of the certified mail postage receipt; as well as copies of pages from the institution's mailroom log book (which contained the location, time and date for all incoming legal mail) - so as to substantially prove that: prison authorities were solely responsible for the delayed mailing of Petitioner's R. 26(B) where ***all previous mailings*** to, and received from, the office of the Clerk of Courts for the Eleventh District Court of Appeals***: only required one business day to arrive via U.S. Mail.***
This documented evidence was later included as part of the state record within Petitioner's federal habeas proceeding: which Petitioner made reference to within his cause & prejudice presentation to address the procedural default holding of Ground Two for Relief.

that Petitioner's first four grounds for relief – claiming ineffective assistance of appellate counsel - were procedurally defaulted. (Doc. 6 – Doc. 12)

Petitioner then on 02/15/2002 filed his Traverse brief.[6] On 06/26/2003 the Magistrate Judge issued his Report and Recommended Decision, recommending that Petitioner's petition be dismissed. Therein holding in regard to Petitioner's first four grounds for relief:

> "[I]n the absence of showing of good cause for the delay the untimely claims were not considered by the state appellate court. That being the cause, petitioner not only failed to raise the claims of ineffective assistance of appellate counsel to the state courts but his opportunity to do so has also expired. Therefore, those claims are procedurally defaulted and can not be heard by this Court absent a showing of cause and prejudice for such default. *Petitioner has failed to meet his burden in this regard, instead arguing the merits of his claim of ineffective assistance of appellate counsel.* In light of such failure, the first four claims for relief raised herein are procedurally defaulted and will not be considered by this Court."[7] [Italic print added.]

Id. On page 10 thereof.

Thereby, Petitioner, then being utterly confused and bewildered as to which cause and prejudice presentation would be deemed by the court as legally adequate, then prepared and filed a timely objection to the Magistrate Judge's R&R on 07/29/2003; and therein substituting

[6] The ineffective assistance of appellate counsel claim raised under his *Ground Two* was the only one of the four habeas grounds for relief which were presented to the state appellate courts. Thereby, within his *Traverse*, Petitioner reserved himself to arguing cause and prejudice so as to overcome the procedural bar raised against the constitutional claims within Ground Two: *only*. In fact, Petitioner devoted seven and one-half (7 ½) typed pages to the delayed mailing of the R. 26(B) by prison authorities – pages 44 to 51- and two (2) pages – 43 to 44 – to the cause and prejudice suffered by appellant counsel's failure to raise said constitutional claims within Petitioner's direct appeal.

[7] Now given the vague nature of the specific content of Magistrate Judge Perelman's adequate assessment in this regard, in the face of Petitioner's double cause & prejudice presentation, clearly Petitioner was affirmatively misled to believe that said his cause & prejudice was legally inadequate.

the *double* cause & prejudice demonstration as contained within his Traverse[8] by simply arguing as Cause: the delayed mailing of his R. 26(B) by prison authorities; and Prejudice: as appellate counsel's failure to raise the dead-bang winner constitutional claims encompassed within Petitioner's R.26(B) on direct appeal.

The Federal District Court Judge, Donald C. Nugent, on 08/05/ 2003, then adopted in full the Magistrate Judge's R & R decision and denied Petitioner's habeas petition. (Doc. 36)

In the diligent pursuit to have the constitutional merits of constitutional claim raised within Ground Two reviewed, Petitioner then filed a Fed. R. Civ. P. 59(A)(2) on 08/28/2003. (Doc. 38 and Doc. 39). Further, on 09/05/2003 Petitioner also filed an amendment to said R.59 motion. (Doc. 40)

On 09/09/ 2003, Petitioner filed with the United State Court of Appeals for the Sixth Circuit his Notice of Appeal and an application for a Certificate of Appealability – seeking to appeal the denial of his habeas petition. (Doc. 41).

The Federal District Court entered a marginal order denying, both, the R. 59 motion as well as the motion to amend said on 09/18/2013. (Doc.42, and Doc. 44, respectively).

Petitioner then on 10/02/2003 filed the first of his Fed. R. Civ. P. 60(b) motions, in his continued effort to receive a review and determination on the constitutional merit of his claims rose under Ground Two. (Doc. 45). And on 10/08/2018 the federal district court denied said R.60(b) motion by marginal order. (Doc. 46)

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[8] Clearly, Petitioner was induced by the specific, yet vague, content of the Magistrate Judge's R & R to surrender his double cause and prejudice presentation.

And on 03/15/2004, the United States Sixth Circuit Court of Appeals denied Petitioner's 09/09/2003 request for a COA. (Doc. 50).

Upon becoming aware of the United State Supreme Court holding in *Trevino v. Thaler,* 133 S. Ct. 1911 (2013), Petitioner filed what amounted to his *fourth* R. 60(b) motion – this time he pursued said under subsection (b)(6) – asserting therein that a "major change in prevailing habeas law" enabled him to establish the necessary cause and prejudice to excuse the procedural default of his "ineffective-assistance-of-trial-counsel claim" encompassed within "the second ground for relief raised in his habeas petition. (Doc.84)

The Federal District Court denied said R. 60(b)(6) motion on 09/11/2013; and subsequently denied a COA. (Doc. 91).

Petitioner thereafter sought a COA in the Federal Sixth Circuit Court of Appeals on 09/27/2013. (Doc. 88). This endeavor, too, was unsuccessful, but not unfruitful. For in the course of explaining its' determination that Petitioner had failed to satisfy the standard for the issuance of a certificate of appealability, the appellate court incidentally disabused Petitioner of a induced fallacy he had ling languished regarding the actual basis of the district court's 2003 procedural holding to *Ground Two* in his habeas petition. That is, in the course of articulating its opinion, the federal court of appeals declared it had ascertained *from the Magistrate Judge's R&R* that the district court's procedural ruling as to *Ground Two* actually constituted an expression by the habeas court that it had found Petitioner to have never presented a cause and prejudice argument: for the delayed mailing of his Ohio App. R. 26(B), period.

To wit:

"[U]pon review of Brown's ineffective-assistance-of-appellate-counsel claim, as asserted in his ground two of his 2001 habeas corpus petition, the district court concluded that the claim was not procedurally defaulted due to any error or omissions by appellate counsel. **Rather**, the district court found that claim procedurally defaulted because it was raised in Brown's pro se application to reopen his direct appeal and that application was denied because it was not timely filed. The procedural default of Brown's second ground for relief was Brown's fault, not appellate counsel's...." [Bold print added.]

Id. Appendix D (Case No. 13-4156)

Now had Petitioner not been misled by the federal district court – specifically the vague content of the Magistrate Judge's R & R – into believing that his *double* cause & prejudice presentation put forth to specifically overcome the procedural bar of ground two was simply inadequate: as opposed to the incorrect legal determination that he had simply not offered the cause & prejudice argument that he had indeed submitted within his Traverse, Petitioner would have then been able to interpose a appropriate objection; and thereafter *if necessary* filed an appropriate certificate of appealability with the federal court of appeals.

Instead, unbeknownst to Petitioner at the time, he had been induced to surrender his double cause & prejudice presentation: which was in fact adequate, and technically correct, *under pro se prisoner status.*

Under Rule 52(a), Fed. R. Civ. P., in conjunction with pronouncements of *Haines v. Kerner,* 404 U.S. 519 (1972), a procedural right devolves on a pro se habeas petitioner to have a court disposing of a properly presented claim adapt its dispositional findings to achieve

meaningful notice to such litigate in light of the inaptness attendant his pro se status. Where a court fails to do so, it has "acted in a manner inconsistent with due process." Id.

Petitioner is a pro se litigant. This is not to say that he is illiterate, nor is it to say that his ability to comprehend what is expressed in what he is reading should be regarded as beset by a handicap for the fact of his status. What *is* essential to fairness on the basis of this status, however, is recognition of the fact that, "[e]ven the intelligent and educated layman has a minimal or sometimes no skill in the science of law." *Powell v. Alabama,* 287 U.S. 45, 53 (1932).

It is this precept that best explains how Petitioner was unable to discern the district court's legal determination that Ground Two remained "[procedurally defaulted and will not be considered by this Court": because Petitioner had completely omitted any evidence or argument at all about why Ground Two never came to be adjudicated in the state court proceeding; as distinguished from a ruling based on legal sufficiency of the argument and evidence he did present. This latent distinction lies at the very heart of what is now recognized as an unconstitutional deprivation of due habeas review. That is, being heard at a meaningful time in a meaningful manner. (Doc. 95, at 6-7)

"If the court proceeds to hear the habeas corpus petition and finds facts without notice to the petitioner sufficient to permit any meaningful participation by the prisoner, the resulting judgment on the petition may be void and may be set aside under Rule 60(b)(4)[9].

[9] A violation of due process during the adjudication of the habeas proceeding can be demonstrated by showing, e.g., that the adjudication involved a procedural omission that incapacitated meaningful review of the basis of the court's decision. See *Spitnas v. Boone,* 464 F. 3d 1213, 1225(10th Cir 2006).

There is no theoretical limit to the possibilities that a judgment could be void because a court with jurisdiction over the subject matter and jurisdiction over the parties nonetheless "has acted in a manner inconsistent with due process of law." *12-60 Moore's Federal Practice-Civil § 60.44 [4]*(2015). "[T]he mere fact that a significant amount of time has passed since a void judgment was rendered cannot 'cure' its fatal infirmity. For this reason, some authorities states that a motion under 60(b)(4) may be made at any time." *12-60 Moore's Practice-Civil § 60.44[5][c].*

"Due process requires notice 'reasonably calculated, under all the circumstances, to appraise interested parties ... and afford them an opportunity to present their objections.'" *United Student Aid Fund Inc. v. Francisco J. Espinosa,* 559 U.S. 260, 272(2010).

Thereby, on 11/12/2014, Petitioner filed a R. 60(b)(4) motion: asserting, therein, that he had been denied due process within his original habeas proceedings where the district court adjudication of his Ground Two involved a procedural omission that incapacitated meaningful reconsideration and appellate review of the true basis of the district court's decision- where the habeas court had failed to take notice of and determine the sufficiency of Petitioner's Cause & Prejudice presentation because Petitioner had presented such after the merits of the constitutional claims. (Doc. 93) Petitioner also, argued that the timing of his R. 60(b)(4) was entitled to Equitable Tolling; in light of the specific content contained with the Federal Sixth Circuit's 03/25/2015 Order.

On 02/11/2015, the federal district court denied the R. 60(b)(4) motion[10]. Judge Nugent pronounced the following:

> "This case and all issues presented have been exhaustively analyzed and ruled upon in prior rulings throughout the past 13 years and this motion presents no basis upon which any of the requested relief should or could be granted."[11]

Id. [R.94]

Thus, Petitioner, respectfully submits, if this is true then Judge Nugent has readily admitted that he had knowing disregarded the applicable rules of law squarely decided by the United States Supreme Court for the sole purpose of preventing Petitioner from obtaining the benefit of his defense. Hence, the unlawful suspension of the Great Writ in direct regard to the constitutional claims contained within Petitioner's Ground Two for Relief. The prejudice suffered is now there is the absence of any adequate remedy of law[12].

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[10] Judge Nugent subsequently denied a COA. (Doc. 94).

[11] It has been as error, as a matter of law, for a federal district judge to rely on his *unsubstantiated* personal feelings. *Amadeo v. Kemp,* 773 F.2d 1141, 1144-45(11th Cir. 1985).

[12] "'[A] habeas petitioner who has failed to meet the State's procedural requirements for presenting his federal claims has deprived the state courts of an opportunity to address those claims in the first instance." Coleman, 501 U.S. at 732.We therefore require a prisoner to demonstrate cause for his state-court default of *any* federal claim, and prejudice therefrom, before the federal habeas court will consider the merits of that claim. 501 U.S. at 750." *Edwards v. Carpenter,* 529 U.S. 446, 451(2000)

"In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law,..." *Coleman v. Thompson,* 501 U.S. 722, 750 (1991).

"[Government inaction such as delay in mailing a prisoner's court filing is one objective factor that may constitute cause for a prisoner's failure to comply with a state's procedural rule. 730 F.3d at 560; *see also* Maples, 340 F.3d at 439. *Henderson* also makes clear that a prisoner is not required to point to specific government conduct demonstrating inaction or interference to demonstrate cause. 730 F.3d at 560. Once a prisoner gives his state court filing to prison officials to be mailed, it is in their control and he no longer has the ability to affect its

delivery. *Id.* If the filing would have been timely filed 'in the normal course of events' but is filed late or never reaches the court, the prisoner has demonstrated cause to excuse the procedural default. *Id.* (quoting Maples, 340 F.3d at 439); *see also* Ivy, 173 F.3d at 1141 ("[I]t [is] incumbent upon the State to ensure that [the prisoner's] motion was promptly put into the regular stream of outgoing mail.").
"In addition to cause, ... must demonstrate prejudice before a federal court may review his procedurally defaulted claim. Lundgren, 440 F.3d at 763-64. *Maples* provides the proper framework for this inquiry because it addresses prejudice in the same context as here—where the state's inaction prevented a timely filing. 340 F.3d at 439. In *Maples*, the court held that the petitioner suffered prejudice when 'the Michigan Supreme Court refused to consider Maples's claim of ineffective assistance of counsel.'*Id.* The *Henderson* court followed *Maples* and effectively assumed prejudice, holding that the untimely filing did not render the petitioner's claims procedurally defaulted. Henderson, 730 F.3d at 560. District courts also have followed *Maples*, finding prejudice where state inaction caused an untimely filing. *(Internal citations omitted.)* Here, as in *Maples*, ... was prejudiced by the state court's refusal to hear his ineffective-assistance-of-counsel claim. *See* Maples, 340 F.3d at 439." *Foster v. Warden Chillicothe Inst.,* 2014 Fed. App. 650, 654-55(6th Cir. 2014)

"The omission of a 'viable' issue, however, does not in and of itself constitute ineffective assistance of counsel. *See* . United States v. Cook, 45 F.3d 388, 394 (10th Cir. 1995)('The Sixth Amendment does not require an attorney to raise every nonfrivolous argument on appeal.'). '[The] process of 'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.' Smith v. Murray, 477 U.S. 527, 536, 106 S. Ct. 2661, 91 L. Ed. 2d 434 (1986) (quoting Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983)). Nevertheless, the omission of a 'dead-bang winner' by counsel is deficient performance which may result in prejudice to a defendant. Cook, 45 F.3d at 395. A 'dead-bang winner' is 'an issue which was obvious from the trial record *and* one which would have resulted in a reversal on appeal.'" *United States v. Challoner,* 538 F.3d 745, 749 (10th Cir. 2009).

"In relation to the defense of accident in a criminal action, this court has noted that, as a general proposition, an 'accident' refers to an unfortunate event which takes place by chance or casually. State v. Brady (1988), 48 Ohio App. 3d 41, 42, 548 N.E.2d 278, quoting *State v. Lovejoy* (M.C. 1976), 48 Ohio Misc. 20, 25, 357 N.E.2d 424. We have also noted that, if the facts of a case warrant an instruction on this defense, a trial court is required to inform the jury that "'proof of accident negates guilt ***.'" 48 Ohio App. 3d at 42, quoting State v. Rivers (1977), 50 Ohio App. 2d 129, 361 N.E.2d 1363, paragraph six of the syllabus. The latter assertion is clearly based upon the fact that a finding of accident supports the conclusion that the defendant had not acted with the required *mens rea.*

"***

Pursuant to the foregoing discussion, this court concludes that the trial court erred in failing to give the requested instruction on the defense of accident. Accordingly, appellant's first assignment has merit." *City of Mentor v. Hamercheck*, 112 Ohio App. 3d 291, (11th Dist. 1996). See, also, *State v. Howell,* 137 Ohio App. 3d 804(11th Dist. 2000). [Emphasis added.]

A habeas corpus petitioner "[would be] entitled to an evidentiary hearing [in federal court] if he [could] show cause for his failure to develop the facts in state-court proceedings and actual prejudice resulting from that failure.Keeney v. Tamayo-Reyes, 504 U.S. 1, 11, 118 L. Ed. 2d 318, 112 S. Ct. 1715 (1992)." *Banks v. Dretke,* 540 U.S. 668, 690 (2004); see also, *Mitchell v. Rees*, 114 F.3d 571, 577 (6th Cir 1997).
Further under Rule 8(c), Rules Governing § 2254 Cases, appointment of counsel would have been mandatory within the required evidentiary hearing: where petitioner would have qualified for counsel under 18 U.S.C.§ 3006A.
"A habeas petitioner has a limited right to legal assistance. The Fifth and Sixth Amendment rights to counsel do not apply to habeas corpus proceedings. *See Pennsylvania v. Finley,* 481 U.S. 551, 555-56, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987); *Douglas v. Maxwell,* 357 F.2d 320, 321 (6th Cir. 1966). Instead, Section 3006A of Title 18 of the United States Code governs a court's appointment of counsel to a habeas petitioner. 28 U.S.C. § 2254(h). If a court finds

Petitioner then filed a notice of appeal and a certificate of appealability with the United States Court of Appeals for the Sixth Circuit on 03/03/2015. (Doc. 95). And on 07/23/2015, the Federal Sixth Circuit denied said COA; therein pronouncing in pertinent part:

> "Brown's Rule 60(b)(4) motion, filed on November 12, 2014, was not filed 'within a reasonable time'[13] after the district court's August 5, 2003 judgment, as eleven years elapsed between the two. Brown was no doubt aware that the district court denied the second ground for relief raised in his habeas as procedurally defaulted at the time that the judgment was rendered, yet he did not pursue this motion until eleven years later[14]. Brown's motion was clearly untimely. *See Bridgeport Music, Inc. v. Smith,* 714 F. 3d 932, 943 (6th Cir. 2013); *United States v. Dailide,* 316 F. 3d 611, 618(6th Cir. 2003). Reasonable jurist would not find it debatable whether the district court was correct in ruling that Brown was not entitled to relief under Rule 60(b)(4)."

Id.

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that an evidentiary hearing is required in a habeas proceeding, it must appoint counsel to the habeas petitioner. *See* Rule 8 of the Rules Governing 28 U.S.C. § 2254." *Parsons v. Money,* 2007 U.S. Dist. LEXIS 13021,[**22- 23](N.D. Ohio). (N.D.Ohio)

"The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that: "The Privilege of the Writ of Habeas Corpus shall not be suspended . . . ." U.S. Const., Art. I, § 9, cl. 2. The scope and flexibility of the writ -- its ability to cut through barriers of form and procedural mazes -- have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. As Blackstone phrased it, habeas corpus is "the great and efficacious writ, in all manner of illegal confinement." As this Court said in *Fay* v. *Noia*, the office of the writ is "to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints." *Harris v. Nelson,* (1969) 394 U.S.291-92(1969).

[13] The United States Supreme Court, has held, in *United States Aid Funds Inc. v. Espinosa* 559 U.S.260(2010); that a Fed. R. Civ. P. 60(b)(4) is to be analyzed so as to determine: if litigants had slept on their rights, *not whether the 60(b)(4) motion had been filed "in a reasonable time."* And the habeas record clearly shows that Petitioner, proceeding pro se, did not sleep on his rights.

[14] The United States Court of Appeals for the Sixth Circuit had been made well aware that Petitioner had filed well in excess of five (5) Rule 60(b) motions, prior to his submission of said 60(b)(4) motion.

The federal appellate court, on 12/02/2015, also denied Petitioner's Motion for Rehearing En Banc. A Writ of Certiorari was also denied, by the United States Supreme Court, on

On 12/14/2018, Petitioner filed in the federal district court the following post-habeas motions: (1) motion and affidavit to recuse- made in good faith – under 28 U.S.C.S. § § 144 and 455; (2) a motion for relief from judgment under component (1) and (3) of the FRCP 60(d) in conjunction with FRCP 15(c)(1)(B); and also (3) a motion to hold said R. 60 (d) in abeyance for a minimal period of ten (10) days so as to provide Judge Nugent with the allotted time to rule on the motion to recuse.

On 01/08/2019, Judge Nugent entered two (2) Marginal Orders. The first denied Relator's §§144/455 motion as follows: "There is no basis in law or fact to warrant recusal." And the second denied the motion to hold the R. 60(d) in abeyance; by simply pronouncing: "Denied."

Thereby, on 01/23/2019, Petitioner (Relator) petitioned the United States Court of Appeals for the Sixth Circuit for a Writ of Mandamus. Petitioner, therein, requested that the court of appeals: (1) compel District Court Judge, Donald C. Nugent, to recuse himself based on his clear acts of pervasive biasness, willful disregard of law, and antagonism; and (2) vacate the district court's order which denied Brown's Hybrid FRCP 15 and FRCP 60(d) motion. So that an unbiased federal district court judge could then decide the hybrid FRCP motion.

On 06/10/2019, a panel of the United States Sixth Circuit Court of Appeals held in denying said: Brown argues that the district court judge 'had a clear duty to recuse: upon a clear showing of his pervasive biasness, antagonism, and manifest disregard of the law,' but a review of the record below indicate no biasness, antagonism, and manifest disregard of the law.'"

However this ruling by the sixth circuit court of appeals is unsupported by the record, as well as contrary to firmly established law as established by the United States Supreme Court.

To wit: In order for the sixth circuit court of appeals to justifiably arrive at such a holding they' would have had to conclude *after their' own review* of Petitioner's cause & prejudice showing and documented evidence, *as contained within Petitioner's Traverse* that said was insufficient – even with a liberal reading and liberal construction — to overcome the procedural default of Ground Two. Otherwise, the panel of the sixth circuit has in effect done nothing less but work in concert with Judge Nugent in the unlawfully suspension of the Great Writ in regard to the constitutional claims properly presented within Petitioner's Ground Two for Relief.

Reason for Granting Writ

This Petition should be granted so that this Court can *definitively* determine: whether a United States Court of Appeals and/or a United States District Court possess the authority to simply refuse to determine a presentation of cause & prejudice -- presented within a Merit (Traverse) Brief to address a procedural default -- merely because the cause & prejudice argument(s) was/were *not* presented prior to the merits of the constitutional claim, in a specific chronological order: so as to cease the arbitrary treatment of said – and all that that entails – by federal jurist(s).

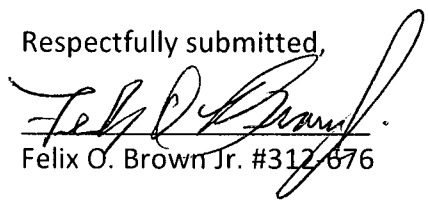
"The scope and flexibility of the writ -- its capacity to reach all manner of illegal detention -- its ability to cut through barriers of form and procedural mazes -- have always been emphasized and jealously guarded by courts and lawmakers...As Blackstone phrased it, habeas corpus is 'the

great and efficacious writ, in all manner of illegal confinement.'" *Harris v. Nelson,* 394 U.S. 286, 290-91(1969).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Felix O. Brown Jr. #312-676

Date: August 28, 2019