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In The
Supreme Court of the United States
_______________ Term, __________

Supreme Court, U.S.
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Travis Dennis v. DARREL VANNOY, Warden

On Petition for a Writ of Certiorari to

U.S. FIFTH CIRCUIT COURT OF APPEALS

Travis Dennis #588476
MPEY/Spruce-1
Louisiana State Penitentiary
Angola, Louisiana 70712-9818

August 30, 2019

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QUESTIONS PRESENTED

1. **Reasonable jurists could find that the Courts have abused their discretion in accepting the jury's verdict even though the Record supports that Ronald Smith regularly carried firearms on his person and had previously severely beaten Mr. Dennis' ex-girlfriend less than an hour before Mr. Dennis confronted him.**
2. **Reasonable jurists would determine that defense counsel rendered ineffective assistance of counsel by failing to require the Court to hold a hearing concerning the *Batson* objection prior to trial.**
3. **Reasonable jurists could argue that the appellate counsel was ineffective for failing to raise the Issue of a *Batson* challenge during Appeal.**

INTERESTED PARTIES

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In The
Supreme Court of the United States
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No.: ____________________

TRAVIS DENNIS v. DARREL VANNOY, Warden

Petition for Writ of Certiorari to the U.S. Fifth Circuit Court of Appeal

Pro Se Petitioner, Travis Dennis respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Louisiana First Circuit Court of Appeal (Docket No.: 2013-KA-0611 and 2017-KW-1354) and the Louisiana Supreme Court (2013-K-2828 and 2018-KP-0085), entered in the above entitled proceeding on November 28, 2018; that the issues presented to the State Courts were: (1) Reasonable jurists would debate that the Mr. Dennis was denied a fair and impartial trial with the ***Batson*** violations and the appellate counsel's failure to argue such during Appeal.

NOTICE OF PRO-SE FILING

Mr. Dennis requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Mr. Dennis is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

OPINIONS BELOW

The opinion(s) of the Louisiana First Circuit Court of Appeal was assigned Docket Nos.: 2013-KA-0611 (Appeal) and 2017-KW-1354 (PCR), and the Louisiana Supreme Court was assigned Docket Nos.: 2013-K-2828 (Appeal) and 2018-KP-0085 (PCR). These pleadings were filed as Direct Appeal, Writ of Certiorari, and Supervisory and/or Remedial Writs.

JURISDICTION

The judgment of the U.S. Fifth Circuit Court of Appeal, was entered on May 21, 2019. This Court's

Certiorari jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth, Fifth and Sixth Amendments to the United States Constitution.

STATEMENT OF THE CASE

On May 6, 2010, the Jefferson Parish Grand Jury returned an indictment against Travis Dennis for Second Degree Murder and Attempted First Degree Murder, violations of LSA-R.S. 14:30.1 and LSA-R.S. 14:27:30. (R.p.28).

Mr. Dennis entered a not guilty plea to both charges and later filed several discovery motions, a Motion to Suppress Evidence, a Motion to Suppress Statements, and a Motion for a Preliminary Examination. Following a brief hearing, the district court concluded that there was sufficient information for the police officers to develop probable cause (R.p.117) to arrest Mr. Dennis and it denied (R.p.16) the two motions to suppress (R.p. 132).

A twelve-member jury was selected and the State presented its evidence. The defense responded by presenting Mr. Dennis' testimony to rebut the State's contention that he committed Second Degree Murder. The jury subsequently returned a not guilty verdict (R.p.23) against Mr. Dennis for the Attempted First Degree Murder charge. The jury entered a guilty verdict against Mr. Dennis for Second Degree Murder. The district court accepted the jury's verdict and scheduled sentencing for a later date.

Prior to the sentencing hearing, defense counsel had a traffic accident, and asked another attorney with the Jefferson Parish public defender's office stand in to represent Mr. Dennis for sentencing. Once Mr. Dennis consented to Calvin Fleming as the replacement, the district court sentenced him on September 15, 2011, to the mandatory LIFE sentence without the benefits of probation, parole or suspension of sentence (R.p. 315).

The district court then advised Mr. Dennis of the 30-day period for filing a motion to reconsider his sentence, and the two-year period for filing an application for Post Conviction Relief pursuant to

La.C.Cr.P. Art. 930.8. Because neither his trial counsel, nor the attorney who represented him for the sentencing had filed a motion for appeal, Mr. Dennis was compelled (R.p. 84) to file an application for post conviction relief to have his right to appeal recognized (R.pp. 73-87). The District Court granted Mr. Dennis' motion for appeal, and Prentice L. White of the Louisiana Appellate Project filed an appellate brief on his behalf on November 28, 2012 into the Louisiana Fifth Circuit Court of Appeal. On January 7, 2013, the State filed a response brief. (Exhibit D).

On May 16, 2013, the Louisiana Fifth Circuit Court of Appeal affirmed the conviction and sentence. The reviewing judges were Robert A. Chaisson, Susan M. Chehardy, and Hans J. Liljeberg and the case was assigned Docket Number 2012-KA-818.

On June 7, 2013, Certiorari was filed into the Louisiana Supreme Court, Docket Number 2013-KO-1384. Certiorari was denied on December 6, 2013.

On April 3, 2014, Applicant filed an Application for Post Conviction Relief with Memorandum in support into the 24th Judicial District Court.

On July 25, 2014, the District Court denied Applicant's Post Conviction Relief Application, which was received by Angola Legal Programs on August 11, and signed for and received by Applicant on August 13, 2014.

On August 14, 2014, Mr. Dennis filed a Notice of Intent to Seek Supervisory Writs and asked for a return date for filing with the Fifth Circuit Court of Appeal. On August 28, 2014, Mr. Dennis filed for Supervisory Writs into the Louisiana Fifth Circuit and was denied on October 24, 2014. On November 12, 2014, Mr. Dennis filed for Certiorari into the Louisiana Supreme Court and was denied on September 25, 2015.

On May 13, 2016, Mr. Dennis filed his Application for Habeas Corpus to the Louisiana Eastern district. On July 12, 2018, the District Court dismissed Mr. Dennis' petition, with prejudice.

On September 6, 2018, Mr. Dennis filed his *Pro-Se* Application for Certificate of Appealability, which was denied by the United States Fifth Circuit Court of Appeal on May 21, 2019 in Docket No. 18-30878.

Mr. Dennis now timely files for Writ of Certiorari to this Honorable Court, requesting that this Honorable Court, after a thorough review, find that Mr. Dennis' Claims are deemed good and proper, and that relief is necessary for the following reasons to wit:

Mr. Dennis has remained in continued custody since his arrest, and is currently an inmate at Louisiana State Penitentiary at Angola, Louisiana, Darrel Vannoy, Warden. Applicant asks that his *Pro-Se* efforts herein be liberally construed as he has made a good faith effort to follow form. See, ***United States v. Glinsey,*** 209 F.3d 386, 392 (5th Cir. 2000).

Mr. Dennis then sought Certificate of Appealability to the United States Fifth Circuit Court of Appeal in Docket No.: 18-30878, which was denied on May 21, 2019. It is upon this Ruling that Mr. Dennis is timely seeking Writ of Certiorari to this Honorable Court, humbly requesting that this Honorable Court invoke its Authority over the lower courts and grant him relief for the following reasons to wit:

STATEMENT OF THE FACTS

Travis Dennis and Dishall Davis had known each other since 2007, and had grown quite fond of each other during that time. Soon, the two of them decided to start dating and see where their relationship would take them. Unfortunately, after a year and a half, Mr. Dennis and Dishall ended their relationship. They remained amicable and went their separate ways. Being rather young in age, Mr. Dennis turned his attention to finishing school and working at his par-time job. Dishall, on the other hand started a relationship with Ronald Smith.

Unlike her previous relationship, Dishall's relationship with Ronald became very tumultuous early

into their relationship. At first their arguments were like those of a brother with a sister, but as time passed, their arguments became violent and they were verbally abusive toward each other. Dishall was also known to call the police on a regular basis whenever she did not get her way, or whenever she may have lost a verbal argument with Ronald. Ronald and Dishall later ended their relationship, but still continued to remain cordial with each other.

On February 21, 2010, Ronald Smith and Terineisha Ealy were at Dishall's apartment. After visiting with Dishall, Ronald and Ealy decided to go to the store. Dishall then made a request for Ronald to buy her some cigarettes. Ronald went to the store to buy himself some cigarettes and some other items. After leaving the store, Ronald and Ealy went to his apartment. He did not buy cigarettes for Dishall.

At approximately, 2 am on the morning of February 22, 2010, Dishall knocked on Ronald's door, asking for her cigarettes. When Ronald opened the door, Dishall immediately became enraged against Ronald because Ronald had not bought her the cigarettes she requested. She also noticed that Ealy was in Ronald's apartment. Realizing that Dishall was becoming argumentative and aggressive, Ronald retreated to the kitchen, hoping that Dishall would just leave his apartment. Instead, Dishall grabbed Ronald's hair and started hitting him. Ronald and Dishall then started hitting each other until Ealy separated them. As Dishall was leaving out of Ronald's apartment, she mentioned that she was going to call the police and report Ronald for hitting her. Dishall's statement caused Ronald to start fighting (R.p.237) her again.

Ealy again separated them and asked Ronald to walk with her to a nearby gas station to buy some drinks. (R.p.224). Ronald agreed. Instead of calling the police, Dishall called her ex-boyfriend, Dennis, and told him how Ronald attacked and beat her in his apartment.

Less than an hour after they had left the apartment, Ronald and Ealy heard a car (later identified as

a blue Chevy Malibu) (R.p.197) drive up behind them with its high-beam lights on. Ronald and Ealy were behind a local daiquiri shop when Dennis got out of the car and approached Ronald about the fight Ronald had with Dishall. (R.p.194). Although Ronald knew that Dennis dated (R.p.242) Dishall in the past, he did not take kindly to being approached by Dishall's ex-boyfriend about an argument he had with her. Still upset about how Dishall attacked him and then threatened to call the police and report him for the fight, he lunged toward Dennis as if he was going to pull out a gun and shoot.

Mr. Dennis knew Ronald's reputation (R.p.281) for carrying handguns. Dennis was still very upset about Ronald's behavior with Dishall and greatly feared for his life. He went to his car, pulled out a shotgun (R.p.109) and fired. Within fifteen seconds, (R.p.196) the entire ordeal was over. Dennis left the scene because he was distraught (R.p. 267) over what he had done. Dennis was arrested a short time later, (R.p.114) and charged with the above offenses.

REASONS FOR GRANTING THE WRIT

In accordance with this Court's ***Rule X, § (b) and (c)***, Mr. Dennis presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that

conflicts with relevant decisions of this Court.

IV. Specific Issue(s).

1. **Reasonable jurists could find that the Courts have abused their discretion in accepting the jury's verdict even though the Record supports that Ronald Smith regularly carried firearms on his person and had previously severely beaten Mr. Dennis' ex-girlfriend less than an hour before Mr. Dennis confronted him.**
2. **Reasonable jurists would determine that defense counsel rendered ineffective assistance of counsel by failing to require the Court to hold a hearing concerning the *Batson* objection prior to trial.**
3. **Reasonable jurists could argue that the appellate counsel was ineffective for failing to raise the Issue of a *Batson* challenge during Appeal.**

CLAIM 1

Reasonable jurists could debate that Mr. Dennis' conviction was obtained with insufficient evidence.

LAW AND ARGUMENT

Unfortunately, many of the murder cases in our state occur between people who are acquainted with each other. The victim is usually a close friend to the accused or someone who is involved in a relationship with the accused. In the instant matter, the decedent and Dennis knew each other from the neighborhood, but they had also dated the same woman, Dishall Davis. Dishall is a very demanding and opinionated (Tr. Rec.p. 244) woman. She was also known to have difficulty getting along with others and she aggressively acts out whenever she does not get her way.

This woman was the nucleus of the entire incident even though she did not pull the trigger to the gun that ultimately killed Ronald Smith. Dishall, however, was not a victim (Tr. Rec.p. 271). In fact, Dishall was the villain. She resented Ronald for moving on with his life by starting a relationship with Terineisha Ealy. Instead of being understanding and allowing Ronald to pursue his new relationship with Ealy, Dishall launched out against Ronald and hit him repeatedly (Tr. Rec. p. 252). When she could not win that way, she decided to antagonize Ronald by threatening to call the police and report

him for being abusive (Tr. Rec.p. 230) towards her.

Ronald Smith was shot and killed. This was indeed tragic and horrible, but Ronald was not the only victim in this case. Ealy was also a victim because her relationship with Ronald Smith began and ended on the same day. Mr. Dennis was another victim. Although Mr. Dennis was the person who pulled the trigger, he did so because he was awakened by Dishall's telephone call, telling him that Ronald had brutally beaten her just a few minutes earlier. Though his relationship with Dishall did not evolve into something more, Mr. Dennis still cared for Dishall and did not want another man abusing her. This was his motivation for approaching Ronald on that fateful night. Mr. Dennis lost control. He was overwhelmed with anger because Ronald had the audacity to beat Dishall and think that he could get away with doing something so reprehensible. Mr. Dennis' behavior was wrong and inexcusable, but it was not Second Degree Murder. It was Manslaughter. For this reason, the district court abused its discretion by accepting the jury's verdict for Second Degree Murder.

Manslaughter is a responsive verdict to a charge of Second Degree Murder under La.C.Cr.P. Art. 814 (A). See: ***State v. Payton***, 2010-1166 (La. App. 4th Cir. 5/18/11), 68 So.3d 594, 602. The presence of "sudden passion" or "heat of blood" distinguishes Manslaughter from murder. Further, ***sudden passion or heat of blood*** are not elements of Manslaughter; rather, they are mitigation factors in the nature of a defense with exhibits a degree of culpability less than that present when the homicide is committed without them. ***State v. Goodley***, 2001-0077 (La. 6/21/02), 820 So.2d 478 (stating that the jury must be given the option to convict the defendant of the lesser offense, even though the evidence admitted at trial may clearly supports a conviction of the charged offense)(citing, ***State v. Porter***, 93-1106, p. 4 (La. 7/5/94), 639 So.2d 1137, 1140). Also see: ***State v. Tillman***, 08-0408 (La. App. 4th Cir. 3/4/09), 7 So.3d 65, 76 (citing ***State v. Lombard***, 486 So.2d 106, 110 (La. 1986)).

This Court previously stated that "[a] conviction based on insufficient evidence cannot stand, as it

violates Due Process." See: Fourteenth Amendment to the United States Constitution; Louisiana Constitution of 1974, Art. I, § 2. Further, the ***Jackson***[1] standard of review dictates that this standard of review for insufficiency of the evidence requires the court affirm the conviction if a rational trier of fact could conclude that the State had proven the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the prosecution. This standard has been codified in LSA-R.S. 15:438, and further requires that the State's evidence must exclude ***every*** reasonable hypothesis of innocence. Thus, this Court, after reviewing the appellate record, will find that the State has failed to meet its burden to override Mr. Dennis' claim of that Ronald Smith's death was the result of Manslaughter as opposed to Second Degree Murder.

This Court's inquiry into the legitimacy of Mr. Dennis' conviction does not end simply because there was an admission that Mr. Dennis pulled the trigger to the rifle (Tr. Rec.p. 105) that killed Ronald Smith. Mr. Dennis repeatedly argued at trial that his use of force was to protect himself from Ronald's violent behavior and to defend Dishall Davis. Therefore, this Court cannot overlook Mr. Dennis' reasonable belief that Dishall was in severe, immediate danger and that he needed to confront Ronald about his behavior.

Further, when Ronald made a gesture (Tr. Rec. p. 284) toward him as if he was going to pull out a weapon, Mr. Dennis responded by getting his weapon and shooting first. Because there were other factors that altered the components for a Second Degree Murder conviction, it is argued that Mr. Dennis' conviction was unreasonable and not in conjunction with the evidence presented at trial.

For example in ***State v. Lawson***, 08-0123 (La. App. 5th Cir. 11/12/08), 1 So.3d 516, the defendant was convicted of Second Degree Murder after the jury concluded that he shot his ex-girlfriend in the head after she entered their apartment to retrieve her belongings. On appeal, the defendant claimed that

[1] ***Jackson v. Virginia***, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). See also: La.C.Cr.P. Art. 821 (B); and ***State v. Mussall***, 523 So.2d 1305, 1308-09 (La. 1988).

he shot his ex-girlfriend in self-defense after the two of them struggled over a handgun that he bought several hours earlier.

The appellate court rejected his claim of self-defense, finding that the evidence showed that the defendant brought the handgun into the room where he shot his ex-girlfriend in the head. The reviewing court did not find a Manslaughter conviction appropriate because the evidence did not support the inference that the ex-girlfriend had threatened the defendant or caused him to lose his self-control before the shooting. *State v. Lawson*, 1 So.3d at 524.

In this case, it is clear that Mr. Dennis felt that his life was in jeopardy when he confronted Ronald abut abusing Dishall. He had no intent to harm or kill Ronald at the time of the confrontation. However, everything went painfully wrong when Ronald acted as if he was going to take out a weapon on him. For this reason, the jury's guilty verdict for Second Degree Murder was incorrect because there was not sufficient evidence to convict Mr. Dennis of this offense. Rather, the verdict should have been for the lesser included offense of Manslaughter (Tr. Rec.p. 60). Accordingly, Mr. Dennis requests that this Honorable Court reverse his conviction for Second Degree Murder and enter a judgment of acquittal.

CLAIM 2

Reasonable jurists would determine that trial counsel rendered ineffective assistance of counsel by failing to require the trial court to hold a hearing on his *Batson* objection prior to trial.

At the start of trial on August 23, 2011, just before the jury was brought in, Mr. Dennis' trial counsel raised a *Batson* objection. It was argued that the number of African-American prospective jurors was not representative of the composition of Jefferson Parish. (R.pp. 139-140).

The Court noted the objection and went on to say that two African-Americans were selected for the jury, one was selected for an alternate spot, a Ms. Miro was not selected, and a Ms. Tuckerson was

selected as an alternate, but was allowed to leave to care for her other in the hospital.

Since the ultimate issue is whether the State has discriminated in selecting the defendant's venire, however, the defendant may establish a prima facie case "in other ways than by evidence of long-continued unexplained absence of 'members of his race' from many panels." ***Cassell v. Texas***, 339 U.S. 282, 290, 70 S.Ct. 629, 633, 94 L.Ed. 839 (1950)(plurality opinion). In cases involving the venire, this Court has found a prima facie case on proof that members of the defendant's race were substantially underrepresented on the venire from which his jury was drawn, and that the venire was selected under a practice providing "the opportunity for discrimination." ***Whitus v. Georgia***, supra, 385 U.S., at 552, 87 S.Ct., at 647; see ***Castenada v. Partida***, 430 U.S., at 494, 97 S.Ct., at 1280; ***Washington v. Davis***, supra, 426 U.S., at 241, 96 S.Ct., at 2048; ***Alexander v. Louisiana***, 405 U.S., at 629-631, 92 S.Ct., at 1224-26.

This combination of factors raises the necessary inference of purposeful discrimination because the Court has declined to attribute to chance the absence of black citizens on a particular jury array where the selection mechanism is subject to abuse. When circumstances suggest the need, the trial court must undertake a "factual inquiry" that "takes into account all possible explanatory factors" in the particular case. ***Alexander v. Louisiana***, supra, at 630, 92 S.Ct., at 1225.

Batson v. Kentucky, 476 U.S. 79, 95, 106 S.Ct. 1712, 1772, 90 L.Ed.2d 69 (1986).

There was no hearing on the ***Batson*** issue. The court failed to make a "factual inquiry" that "takes into account all possible explanatory factors" in this particular case. Trial counsel raised the issue, then failed to ensure that a hearing ensued in order to present the proper facts and figures on the record. Further, since the judge named for the record only African-American females, it raised a red flag on the issue of gender discrimination, as well.

It should be noted that the courts in Louisiana, and its federal appellate circuit, have historically

refused to extend the holding of *Batson* to gender. The Federal Courts of Appeal have divided on the issue. . . . (declining to extend ***Batson*** to gender); . . . ***United States v. Broussard***, 987 F.2d 215, 218-220 (5th Cir. 1993) (same) . . . State courts also have considered the constitutionality of gender-based peremptory challenges . . . (refusing to extend ***Batson*** to gender); . . . ***State v. Adams***, 533 So.2d 1060, 1063 (La.App. 1998), (same) *cert.denied*, 540 So.2d 338 (La. 1989).

J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 128, n.1, 114 S.Ct. 1419 (1994).

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); ***Trevino v. Texas***, 503 U.S. 562, 112 S.Ct. 1547, 118 L.Ed.2d 193 (1992). "Purposeful racial discrimination in selection of the venire violates a defendant's right of equal protection."

While a Prosecutor violates the Equal Protection Clause by challenging potential jurors solely on the basis of their race, ***Thompson v. Cain***, 161 F.3d 802 (5th Cir. 1998), the Equal Protection Clause extends to gender as well, and covers the selection of jurors from the general venire as much as it covers selection to a particular petit jury. ***Batson***, supra.

Since 1994, the United State Supreme Court has held that it is unconstitutional to discriminate on the basis of gender as well as race.

> We granted certiorari, 508 U.S. 905, 113 S.Ct. 2330, 124 L.Ed.2d 242 (1993), to resolve a question that has created a conflict of authority – whether the Equal Protection Clause forbids peremptory challenges on the basis of gender as well as on the basis of race. Today we reaffirm what, by now, should be axiomatic: Intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause, particularly where, as here, the discrimination serves to ratify and perpetuate invidious, archaic, and over-broad stereotypes about the relative abilities of men and women.

J.E.B. v. Alabama ex rel T.B., 114 S.Ct. 1419, 1422, 511 U.S. 127, 130-31 (1994).

A professional attorney should be familiar with well-established law on issues affecting his or her clients. After objecting on the ***Batson*** issue, trial counsel rendered ineffective assistance of counsel by failing to ensure a hearing where the Equal Protection Clause violation, as well as gender and racial

discrimination issues, could be fully litigated prior to trial.

Further, since a ***Batson*** challenge was raised at trial, it was ineffective assistance of counsel to fail to ensure a transcript of the proceedings during voir dire and closing arguments was made available for appellate and collateral proceedings.

No transcripts of these proceedings are contained in the record on direct appeal even though an objection to the jury selection process was made contemporaneously at trial. Mr. Dennis should be granted an out-of-time appeal where a complete record can be utilized.

Moreover, Mr. Dennis states a claim that, if proven, would entitle him to Post-Conviction Relief. Further, Mr. Dennis shows a specific need for the requested documents in order to pursue his collateral attack upon his conviction, and is therefore entitled to seek cost-free copies to support his claims on PCR. *Landis v. Moreau*, 779 So.2d 691 (La. 2001), citing *Simmons v. State*, 647 So.2d 1094; *State ex rel. Bernard v. Crim. Dist. Court*, 653 So.2d 1174 (La. 1995).

This Honorable court should exercise its supervisory powers to either grant Mr. Dennis his requested relief, or, at the least, grant Mr. Dennis' request for an evidentiary hearing, with appointed counsel, in order to develop his claims and present them in court in a full and fair manner.

CLAIM 3

Reasonable jurists could argue that appellate counsel failed to raise issue of *Batson* challenge during Appeal.

Mr. Dennis contends that potential female jurors were excluded because of their gender and/or their race, mainly, women and African Americans. There are objections in the record made prior to the jury being selected at the start of trial. The exclusion of jurors for reasons of either their gender, or their race, or both, is a violation of the Fourteenth Amendment to the United States Constitution. *J.E.B. v. Alabama ex rel. T.B.*, *supra*; ***Batson v. Kentucky***, 476 U.S. 79, 100 S.Ct. 1712, 90 L. Ed.2d 69 (1986); ***Powers v. Ohio***, 499 U.S. 400, 111 S.Ct. 1364, 113 L. Ed.2d 411; ***State v. Green***, 634 So.2d 503

(La.App. 4 Cir. 1994); and ***State v. Collier***, 553 So.2d 815 (La. 1989).

On September 23, 2011, trial counsel raised a ***Batson*** challenge out of the presence of the jury. While a prosecutor violates the Equal Protection Clause by challenging potential jurors solely on the basis of their race, ***Thompson v. Cain***, 161 F.3d 802 (5th Cir. 1998), exclusion from the general venire is equally reprehensible. This constitutional protection extends to gender, as well.

Mr. Dennis' appellate counsel failed to raise this issue on appeal. Clearly, there was a contemporaneous objection made on the record challenging the jury selection process. Neither trial counsel, nor appellate counsel requested and utilized transcripts from voir dire and the closing arguments to pursue this issue. This underscores Mr. Dennis' need for discovery of documents, especially the transcripts of proceedings, as requested herein.

A criminal defendant has a right to the record on appeal, which includes a complete transcript of the proceedings at trial. ***United States v. Neal***, 27 F.3d 1035 (5th Cir. 1994); ***Griffin v. Illinois***, 351 U.S. 12, 76 S.Ct. 585 (1956). Had trial and/or appellate counsel procured these documents at that time, Mr. Dennis would not be in the present position of having to rely on ***Bernard***, supra.

A defendant's Sixth Amendment right to effective assistance of counsel applies not just at trial, but also on direct appeal. ***Evitts v. Lucey***, 469 U.S. 387, 105 S.Ct. 830 (1985).

"The reasonableness standard applicable to counsel's decision not to raise an issue on appeal requires counsel to research relevant facts and law, or make an informed decision that certain avenues will not prove fruitful; solid, meritorious arguments based on directly controlling precedent should be discovered and brought to the Court's attention. ***United States v. Phillips***, 210 F.3d 345 (5th Cir. 2000).

R.p. 139 through p. 140, line 10 (See Exhibit CC, sub-Exhibit C).

Mr. LEMMON: Yes, Your Honor, just a brief argument - - just address one issue outside of the presence of the jury.

THE COURT: Uh-huh.

Mr. LEMMON:	Your Honor, my indication of the jury venire shows that my estimation, if I'm correct, were that there were four African American perspective jurors out of however many were had, 36 or 40. And it's the position of the defendant that that's not representative of the composition of the parish of Jefferson. And I just want to make that objection to perfect the record.
THE COURT:	Objection noted.
Mr. LEMMON:	Thank you.
THE COURT:	Before we bring the jurors in - - further to your observation - - I would like the record to reflect that two of those African-Americans were selected and are on the jury, and one is an alternate. And the other, just for the record, was Ms. Miro, who was the only one who was not selected.
Mr. LEMMON:	Correct, Your Honor. One of the other alternatives who was selected was allowed to leave.
THE COURT:	So that must mean there were five, then. Ms. Tuckerson was selected as an alternate then but excused based on surgery needed by her grandmother tomorrow for an aneurysm.
Mr. LEMMON:	Correct.
THE COURT:	Okay. All right. So there were five then, Let the record reflect that. Okay. Let's proceed.

(Jury enters courtroom).

Mr. Dennis therefore raises the claim of erroneous denial of his ***Batson*** Challenge and a hearing prior to trial, and ineffective assistance of counsel on the part of the appellate counsel for not raising the issue on appeal. This "specific" reference to a constitutional violation, without supporting documents on PCR, is allowed under ***State ex rel. Bernard v. Orleans Criminal District Court***, *supra.*

J.E.B. v. Alabama ex rel T.B., 114 S.Ct. 1419 (1994) held that intentional discrimination on the basis of gender by state actors in use of peremptory strike in jury selection violates equal protection clause.

In ***Batson v. Kentucky***, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), this Court held that the

Equal Protection Clause of the Fourteenth Amendment governs the exercise of peremptory challenges by a prosecutor in a criminal trial. The Court explained that although a defendant has "no right to a 'petit jury composed in whole or in part of persons of his own race.' " *id.* at 85, 206 S.Ct., at 1717, quoting ***Strauder v. West Virginia***, 100 U.S. 303,, 305, 25 L.Ed. 664 (1880), the "defendant does have the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria." 476 U.S., at 85-86, 106 S.Ct. at 1717. "Since ***Batson***, we have reaffirmed repeatedly our commitment to jury selection procedures that are fair and nondiscriminatory. We have recognized that whether the trial is criminal or civil, potential jurors as well as litigants, have an equal protection right to jury selection procedures that are free from state-sponsored group stereotypes rooted in, and reflective of, historical prejudice." See: ***Powers v. Ohio***, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991); ***Edmonson v. Leesville Concrete Co.***, 500 U.S. 614, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991); ***Georgia v. McCollum***, 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992).

Although premised on equal protection principles that apply equally to gender discrimination, all our recent cases defining the scope of ***Batson*** involved alleged racial discrimination in the exercise of peremptory challenges. Today we are faced with the question whether the Equal Protection Clause forbids intentional discrimination on the basis of gender, just as it prohibits discrimination on the basis of race. "We hold that gender like race is an unconstitutional proxy for juror competence and impartiality." ***J.E.B. v. Alabama ex rel T.B.***, 114 S.Ct. 1419, 1421, 511 U.S. 127, 128-129 (1994).

Clearly, Mr. Dennis' appellate counsel was not acting as an advocate for his cause, and rendered ineffective assistance of counsel on direct appeal. Mr. Dennis should be granted an out-of-time appeal, or granted the requested post conviction relief. At the least, he should be granted his requested evidentiary hearing in order to fully develop the issues.

SUMMARY OF ARGUMENT

All trials should be fair, and the trial counsel be up to the challenge. Mr. Dennis seeks to have his conviction reversed. His conviction is questionable due to defense counsel's inadequate representation during the course of the trial. Had counsel performed as required by the Sixth Amendment to the United States Constitution and ***Strickland v. Washington***, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the outcome of the trial would have been different.

One of the most important failures by defense counsel was the failure to object that the ***Batson*** violation that occurred during Voir Dire; and requiring the district court to hold a hearing concerning such. Mr. Dennis was denied the right to a trial by a jury of his peers with the State's intentional use of peremptory challenges in order to ensure that the jury would be void of African-Americans. The State intentionally allowed only one African-American on the jury (and one African-American as an alternate).

It must be noted that in this case, the district court did not hold a hearing to determine whether the prosecutor had violated the provisions of ***Batson v. Kentucky***, supra. And, appellate counsel was ineffective for failing to argue such during the Appeal.

CONCLUSION

After a review of the Record in this case, Mr. Dennis this Honorable Court must determine that Mr. Dennis was denied his constitutional rights to a fair and impartial trial in this matter.

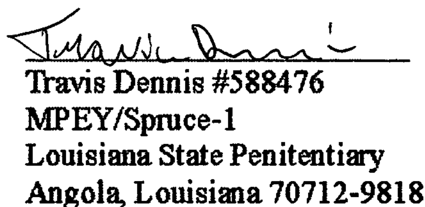
Furthermore, jurists of reason would have properly considered Mr. Dennis' Issues and Granted Mr. Dennis relief from his convictions.

The record sufficiently supports Mr. Dennis' allegation of substantial error. Therefore, this Honorable Court should find that, in the Interest of Justice, Mr. Dennis should receive a new trial, or in the alternative, an evidentiary hearing to review the merits of the constitutional violations. Mr. Dennis

seeks relief and has stated grounds under 28 U.S.C. § 2253, specifying, with reasonable particularity, the factual basis for such relief. Additionally, his pleading clearly alleges Claims which if proven, entitle him to constitutional relief.

WHEREFORE, after a careful review of the merits of these Claims, Mr. Dennis contends that this Honorable Court will find that reasonable jurists would not allow these convictions to stand.

Respectfully submitted this 30th day of August, 2019



Travis Dennis #588476
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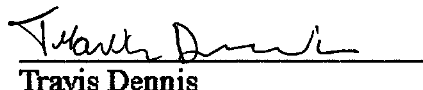
VERIFICATION

I, Travis Dennis, hereby verify that I have read and understand the statements made in the above and foregoing and that the statements made are true and correct to the best of my knowledge, belief, and information under the penalties of perjury.



Travis Dennis