19-5934

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ORIGINAL

In The

SUPREME COURT OF THE UNITED STATES

Cause no. 19-5934

Bruce R Merryman
Petitioner

V.

Lorie Davis, Director of
T.D.C.J. Respondent

On Petition for A Writ of Ceriorari, To The United States Court of Appeals, Fifth Circuit

Petition For Writ of Certiorari:
Petition For Rehearing

Respondent

Lorie Davis, Director
of T.D.C.J.

Respondent's Attorney

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Petitioner

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LIST OF PARTIES

All Parties appear in the caption of the case on The Cover page.

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Exhibit-E, Permit and Building Inspection Report.

Petitioner is respectfull submitting this petition for rehearing in good faith and not for delay, but for justice in my conviction. Petitioner is Prose and is setting out his grounds briefly and distinctly and and certify the grounds are limited to intervening Circumstances of substantial or controlling effect or to other substantial ground not previously presented to the best of his under standing.

In short, Petitioner did set fourth his argument the best he could in his writ of certiorari, but fell short on being able to set out all his arguments in the 40 pages allowed for the petition for writ of certiorari.

Petitioner hopes to persent a clear unmistakable impression on the Honorable Judge's of the Supreme Court, for he was denied his most basic constitutional right during his trial proceeding.

Ground One, Pertains to petitoner's exhausting his State remedies required under § 2254(A) The applicant must exhausted the remedies available in the courts of the State and 2254 (ii) Cirumstances exist that render such process ineffective to protect the rights of the applicant.

Ground two, The A.E.D.P.A. 2244(d) The date on which the factual perdicate of the claim or claims presented could have been discovered through the exercise of Due Diligence and Section 2244(d) The A.E.D.P.A. Statute of limtation is subject to equitable tolling in appropriate cases.

Ground three, Petitioner most basic constitutional rights have been denied him during trial, the right to be present at his own trial to defend himself, the right to effective assistance of trial counsel, the right to have the prosecuting attorney to persent evidence during trial, "Brady Violation" and petitioners right to a fair and just trial, in his absent.

Petitioner will set fourth his argument pertaining to the Grounds Stated as follows:

Petitioner did file his State 11.07 writ of habeas corpus on June-16, 2014, with in the one year statute of limitation but was returned by the trial court as being not filed up to the standured's of the trial court reviewing it. Petitioner filed I believe two more State writ's in the trial court untill he finial got his thried State writ excepted by the trial court on Sep-24, 2014, which was all stated in his "Petitioner Reply to Show Cause Order" and backed up by Exhibit=2, In the United States District Court cause no. SA-17-CA-0311-DAE, under the 2254 federal Habeas.

Petitioners first State writ was Denied without written Order by the Texas Court of Criminal Appeals. Petitioner tried with Due Diligence to file his first State Writ with in the A.E.D.P.A. one year statute of limination ran out. Petitioner Did not have all the documents and or evidence to persent in his first State writ, Because he was being Denied importin documents and or evidence to back up his Grounds, By T.D.C.J.S. mailroom under rule BP-03-91

On 12-3, 2013 and backed up his Claim by Exhibit = 1 in "Petitioners Reply to Show Cause Order", as Stated. Petitioner was allowed to finaly recieve these documents and or evidence at the McConnell Unit in March-2015 and did file his second State writ with newly Dicovered evidence around July-9, 2015, Claiming he was inocent of the Crimes he was convicted of, making sure petitioner exhausted all the remedies available to him in the State Court, Under rules of 2254 (A) The applicant must exhausted the remedies available in the courts of the State, Before invoking federal habeas jurisdiction, see Day V. Mc Donough, 126 S.ct. 1675.

Petitioner was appointed an attorney "Julie B. Pollock" under the second State writ and she was able to locate some importin Hospital Records, that showed petitioner did not voluntary absent himself from his own trial and submitted those Hospital Records in a motion for a hearing on April-12, 2016, A long with an issue of his three convictions of Misapplication of fiduciary Property, Based on a Holding in the Texas Court of Criminal Appeal = Berry V. State, 424 S.W. 3d 579 (2014) which petitioner new nothing about untill Ms, Pollock filed said motion, But was denied a hearing by the trial court.

Petitioners second State writ was sent on to the Texas Court of Criminal Appeals, But was ultimately dismissed as an Second successive writ on March-22, 2017, by the Criminal appeals court.

Petitioner and his attorney did try their best to insure

that all available State remedies were exhausted and that all documents and or evidence was submittend, before filing his federal writ of habeas Corpus § 2254. Under the A.E.D.P.A. 2244(d) The date on which the factual perdicate of the claim or claims presented could have been discovered through the exercise of Due Diligence should have his case equitable tolled as it was in Holland V. Florida, 560 U.S. 631.

Petitioner had extraordinary Circumstance that hindered him from filing his first State writ with in the one year statute of limitation, the State court returned his State writ not one time but three times and made the date of submission of his State writ past the limintation, and then there was the issue of not being able to recieve the documents and or evidence to file with his State write, because T.D.C.J. would not allow me to get those documents per rule BP-03-91, but finaly let him recieve those documents in March 2015, which was past the one year stutute of limination, And then there was the issue of trying to get the Hospital records which petitioner just could not get with out the help of his court appointed attorney "Julie B. Pollock", which was submitted in his second State writ, Plus the issue of the Berry V. State, 424 S.W.3d 579 (2014) where this case shows that petitioners three conviction's of Misapplication of fiduciary property come in to question of not being legal conviction per the law.

Day V. McDonough, 547 U.S. 198. Prisoner must file the writ within one year from the date the criminal Judgment

became final, which usually means the point where you have exhausted your State court remedies. Id.

The 2254 federal writ of habeas corpus, section 2254(A) States; the applicant has exhausted the remedies available in the State and 2254(ii) Circumstances exist that render such process ineffective to protect the right of the applicant.

Petitioner believes his state writ's were denied without written order by the Texas Court of criminal Appeals unfairly and against the constitution.

Dawson V. Texas Court of Criminal appeals, 509 S.W. 3d 294 (2016) The individual Judges on this court who are resolving Habeas applications without a quorum of a panel of Judges or a decision by the En Banc Court are doing so in the absence of any constitutional or statutory authority. Id.

Because neither the law nor the facts support the appeals courts actions of ruling cases with only one Judge, when in fact needs to be three Judges, This is not justice and against the constitution.

Petitioner filed his first state writ in 2014 and was Denied without written order and filed his second state writ in 2015 and was Denied as an second succesive state writ in 2017, by the Texas Court of Criminal Appeals, the very court talked about in (509 S.W. 3d 294).

The documents and or evidence persented in his second State writ were of great importance in fighting his unconstitutional conviction.

first of all petitioner needed those Hospital Records to show he did not voluntarily absent himself from the trial.

As stated in the transcripts during trial, Mr. Eastland my trial attorney: Yes, Your Honor, At this time, Because my client is not present and we do not know whether or not it was voluntary or not, I do know he has a history of Medical Health Issues and were asking at this time --- were asking for a mistrial, The Court: And I respectfully overrule that mistrial, I dont have any reason to believe that Mr. Merryman has done any thing except to voluntarily absent himself.

Petitioner was very sick and was not present at his own trial "mentally or physically" and he tried his best to inform the appeals court this very issue, through his court apponited attorney M.S. Pollock.

Before trial ever took place petitioner was going to the Start Center for cancer care from Nov-11, 2009 untill just before the trial in June-2011.

On April-5, 2011 Just two months before my trial in June-15, 2011, The Start Center Medical records State: Mr. Merryman appears to have gradually dropped into an iron deficiencfy State "Yet Again", He has evidence of profound ~~iro~~ iron deficiency with a Hemoglabion of 7.7 gm. I have advised him to recieve two units of packed Red Cells as an immediate means of improving his Hemoglobin and Hematocrit at the Methodist Hospital, Thereafter, I will initate the

Program of parentarol iron supplementation for Mr. Merryman. We Briefly talked about the fact that profound Enemic States such as the one he presents with today, can result in profound Cardiac stress resulting in cardiomyopathey.

Petitioner went through iron transfusion all the way up untill the trial, at the Start Center for Cancercare. Petitioner believe's that the treatment he was going through and all the meds he was on caused the medical heatth issue's that did occured just before trial and during trial.

The Hospital Records state: 46 year old male was found lying under a tree by the side of I-35, Petients car was abandond at the side of the road and was obeing towed, He was found unresponsive. Petient cannot recall events from the last two days. Petient was admitted to I.C.U. with Acute Renal failure with a creatine of 10.7. Oxygen saturation is low. Altered Mentation with low blood pressure 85/40 and a pulse of 120. <u>It was gradual in onset.</u> Petient is disoriented to person, place, time and situation.

These Hospital records were persented to the Texas Court of Criminal appeals, but they just did not care about me not being present at my own trial to defend myself and they Denied my second State writ, which inculded those 100 pages of Hospital Records.

Petitioner has submitted hospital Records in his fight under the 2254 federal Habeas and is fighting for a chance in a new trial, to defend himself from an

unconstitutional incarceration in T.O.C.J.
Fry V. Pliler, 127 S.Ct 2321, The A.E.D.P.A. Act of 1996 under which a habeas petition may not be granted, unless the state courts adjudication resulted in a decision that was contrary to or involved an unreasonable application of cleary established Federal law, as determind by the Supreme Court of the United States, 28 U.S.C. 2254(d)(1). Id.
Fairey V. Tucker, 132 S.ct. 2218, An accused right to be present at his own trial is among the most fundamental right our constitution secures. In view of the importance of the right involved and the obvious error here, I would grant the petition for writ of certiorari and summarily Reverse the Judgment belowe. Id.

Petitioner did not have these hospital records untill he filed his second 11.07 and had to exhauste the remedies available in the courts of the state. 2254(A).

In the absent of petitioner being at his own trial, he was railroaded, not only by his own trial attorney, but also by the witnesses against him, Petitioners trial attorney was not prepared for a defense and did not investagate the case, did not interduce any evidence on behalf of petitioner, did not bring one witness to testify on petitioner's behalf, such as an C.P.A. to go over his bank records, the Building inspector in the Clifton hair salon project, the Building inspectors report in the clifton case, did not

contact Mr. Garcia in the Lois Morgodo case or her sister Elisa Saukko, who seen all the work performed on the Ms. Morgodo project, My trial attorney did not put up an Honest defence for petitioner during his trial. Strickland V. Washington, 466 U.S. 668.
Petitioner has Newly Dicoverd Evidence that was not persented at trial, and inpart was his trial attorney's fault for not investagating petitioners case before trial.

Blacks law Dictionary, Newly Discoverd Evidence:
Evidence existing at the time of a motion or trial, but then unknown to a party, who, upon later discovering it, may assert it as grounds for reconsideration or a new trial, See Fed. R. Civ. P. 60(b).
Petioner to this day, has not been afforded an hearing, to allow petioner to bring witnesses on his behalf, to show he did not Commit the crime's he has been convicted of, outside his presents.
Petitioner did pay all subs in full on the construction projects he has been convicted of, paid for all metircal used and paid all works used in full. Petitioner did do his job as General Contractor on each project he was convicted of and has one Exhibit-E, at this time to submit to the Supreme Court.
See Exhibit = E, ~~whis~~ withc is the Building inspectors report in the Clifton project. As you can see he had multiple inspections and passed all inspecctions. Note the date on witch he recieved the documents, March 12, 2015.
Petitioner did not know his attorney or the prosecuting

attorney did not submite Building inspectors report during trial.
It was not untill much latter that he found out what took place at his trial, in his absent.
Per the transcripst, Volume-3, page-5, Lines-19, through 23
[Q] Isn't it true when Mr. Merryman got his inspection, He passed the inspection? I Guess the--or-- I Guess the anitial inspection to start the work. Did he got a permit to start the work? (A) Yes, he obtaintd a permit to start the work. stop...
This is my trial attorney ask the prosecuting attorney's investagating officer Mr. Mc Guire about petitioners permit. Every one new I pulled a permit to do the Cliftons hair salon project, But no one submitted it during trial, this is prosecator misconduct and a Brady Voilation; 373 U.S. 83.

Petitioner did not get a fair trial, in his absent. U.S. V. Sipe, 388 F.3d 471. The materiality of Brady material depends almost entirely on the value of the evidence relative to the other evidence mustered by the State. Id.
Holland V. Florida, 560 U.S. 631, Held that 28 U.S.C.S. § 2244(d) is subject to equitable tolling in appropriate cases. Id.
Petitioner argues that there is insufficiency of evidence to sustain petitioner convictions of Theft and Misapplication of fiduciary property and set fourth his arguments in his writ of ceriorari, but was not granted by the Supreme Court, So petitioner is filing his Petition for Rehearing trying his best to show the Supreme Court Judges facts

pertaining to why the Supreme Court should reconsider grainting petitioner case. Petitioner with Due Diligent did try and fight his case with in the one year statute of limination, But there was alot of extraordinary circumstance out side of his controll that did take place in his case, and he had to exhuast all his state court remedies, before filing his §2254 Federal writ of habeas corpus.

Petitioner believes the United States Circuit Judge, Don R. Willett got it right in part when he stated: Accordingly a C.O.A. is Granted, But Further, Merrymans §2254 petition asserts facially valid Constitutional Claims, including claims of inffective assistance of trial counsel and insufficient Evidence, See Strickland V. Washington, 466 U.S. 668 and Jackson V. Virginia, 443 U.S. 307.

Petitioner has a bad case of dyslexia and it has made it very hard for him to read case law and all the rules of court and then file his 11.07 writ's, 2254 writ, writ of Certiorari and now petitioners petition for rehearing, with the ability of an attorney, Petitioner Hopes and Prays the Supreme Court takes this in consideration when looking at his legal writting.

Petitioner was charged with three counts of Theft and three counts of Misapplaction of fiduciary property. In the Clifton case, one count of Theft and one count of Misapplaction of fiduciary property. The Morgodo Case the same, one count theft and one count Misapplaction of fiduciary property and in the Dodwell/Costa case the same two charges as

Stated, Petitioner was charged and convicted twice for the Cliftons, the Morgodo and the Casto & Dadwell case.
At trial there was not one invoice, reciept, money spent on Subs and or works, no list of materals used on any of the Clifton, Morgodo, Casto or Dodwell construction project, There was no evidence to back up the claims that petitioner Misapplied or Stooled any once money and did not do his job as General Contractor on each of the Stated charges or conviction.
All the State had was petitioners Bank Records and never used a person qualified to even under stand those Bank Records, such as a C.P.A., Petitioners own trial attorney did the same thing, had no one to go over the Bank Records and never sat down with the Bank Records and want over them with petitioner.
The State did have Photes of each project, but did not use any one qualified to State what the photes showed for work done on each project, no building inspector or contractor.
The State and investagating officer's only want by what the Cliftons told them, the Morgodo's told them and the Casto/Dodwell told them. And because the main person that did do the work, my self, was not present to put his own input to what was done on all four projects, There has been a MisCariage of Justice in petitioner's case.
Petitioner has all the proof to back up the claim, there is insufficent of evidence to sustain petitioner's

conviction's and just needs the chance in a evidenry hearing or a new trial to proof his innocents.

The investgating officer in the Clifton project, stated at trial that petitioner had no other money put in his Bank account during the Clifton project, But the $48,360.00 the Cliftons paid petitioner to do there project. when in fact petitioner had another $46,515.75 put into his bank account from other projects, outside the clifton project, so this was not a true statement made at trial by the investagating officers, Petitioner had $94,875.15 put into his bank account during the Clifton project. The same investagating officer stated petitioner only put $7,514.56 dollers into the Clifton project when in fact petitioner has invoice's, reciepts, signed proposles from subs and more that were never presented at trial, that shows petitioner put $31,618.03, just in materials, subs, workes wages and all invoice's and recipts. Petitioner was charged with theft of $20,000.00 to $100,000.00 in the Clifton project and if you take the $31,618.03 from the $48,360.00 the Cliftons paid petitioner you come up with $16,741.97 well bellow what petitioner was convicted of, not less then $20,000.00 as stated. That is does not include any wages for petitioner and more in the Clifton project.

After petitioner was paid the last payment per the contract with the Clifton's of $6,342.50. Petitioner paid out over $8,000.00 on the Clifton project. If petitioner was stealing the money as stated at trial, then why would petitioners spend the $8,000.00 plus out on the project

knowning the fact he would not be getting any more money on the Clifton hair salon project.
Plus petitioner was fired by the Clifton on 8-1-2008 and yet petitioner paid Great Dane Plumbing a sub on the Cifton project, $556.00 on 8-5-2008, to insure he was paid in full for work he did on the Clifton project.
Petitioner has more testamony on what was not stated at trial and can back up his claims with documents and or evidence, that will show he is actually innocent of the crimes he was convicted of, he just needs the chance to do so.
Holland V. Florida, 560 U.S. 631, The Supreme Court Held the 2244(d) was subjust to equitable tolling in appropriate cases I.d. And Congress, in short, has considered and accounted for specific circumstances that in it's view excuse an applicants delay. Id.

Petitioner is certifing that this petition for rehearing is presented in good faith and not for delay and has set out his grounds briefly and is respectfull asking the Supreme Court to Grant this rehearing and case.

Signed and Dated
December-23, 2019

Respectfull Supmitted
Bruce R Merryman
Pro Se T.D.C.J. no. 1730381

I Bruce Merry Declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the above stated facts are true and correct.

Bruce R Merryman