No. 19-6070

IN THE

SUPREME COURT OF THE UNITED STATES

MALCOLM McCLENON — PETITIONER
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MALCOLM McCLENON
(Your Name)

LYNAUGH-UNIT 1098 S. HWY. 2037
(Address)

FORT STOCKTON, TX 79735
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1.) IS RELIEF DUE, TO AN CONVICTION, DEVOID OF THE RUDIMENTARY DEMANDS OF FAIR PROCEDURE?

2.) DOES "BATSON" DEFY A HARMLESS-ERROR ANALYSIS?

3.) DOES A CONCLUSORY DENIAL, BY FIFTH CIRCUIT COURT OF APPEALS, OVERRIDE FACTS SUPPORTING "COA" RELIEF?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES - CONTINUED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the FIFTH COURT APPEALS DALLAS, TX court appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 6-10-19.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 7-25-19, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 8-3-16. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FIFTH U.S CONSTITUTIONAL RIGHT TO IMPARTIAL JURY.
THE SIXTH U.S CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.
THE FOURTEENTH U.S CONSTITUTIONAL RIGHT TO NON-DISCRIMINATORY SELECTED JURY.
THE FOURTEENTH U.S CONSTITUTIONAL RIGHT TO " PROOF BEYOND REASONABLE DOUBT".

STATEMENT OF THE CASE

PETITIONER, WAS CONVICTED ON JUNE 6, 2014, BY JURY TRIAL OF THE OFFENSES OF, POSSESSION OF MARIJUANA IN AMOUNT OF 5 OR MORE BUT LESS THAN 50 POUNDS - CAUSE NO. F12-5485-W, AND UNLAWFUL POSSESSION OF A FIREARM BY CONVICTED FELON - CAUSE NO. F12-5486-W, IN AN AUXILLARY COURT FOR THE 363rd DISTRICT COURT OF DALLAS COUNTY, TEXAS. SIT-IN JUDGE - ANDREW KUPPER PRESIDED OVER SAID TRIAL. IT IS THE UN WAVERING CONTENTION OF PETITIONER, THAT HIS CONVICTIONS WERE SECURED AT THE EXPENSE OF HIS UNITED STATES CONSTITUTIONAL RIGHTS, NAMELY, THE RIGHT TO AN IMPARTIAL JURY U.S.C.A. CONST. AMEND. 5, RIGHT TO NON-DISCRIMINATORY SELECTED JURY U.S.C.A. CONST. AMEND. 14, EFFECTIVE ASSISTANCE OF COUNSEL U.S.C.A. CONST. AMEND 6. AND, PROOF BEYOND REASONABLE DOUBT OF EVERY ELEMENT OF CHARGE NECESSARY TO CONSTITUTE, THE SAID ALLEGED CRIMES. U.S.C.A. CONST. AMEND. 14., IT'S THE VIOLATION OF THESE RIGHTS, THAT CAUSES HIS CONVICTIONS TO BE FUNDAMENTALLY UNJUST, IN THAT SAID TRIAL WAS NOT CONDUCTED WITHIN THE RUDIMENTARY DEMANDS OF FAIR PROCEDURE; DUE PROCESS HAS BEEN FURTHER VIOLATED, BY AFTER SLIGHTLY OVER 6 MONTHS OF REVIEW, THE FIFTH CIRCUIT COURT OF APPEALS COURT, GAVE AN CONCLUSORY DENIAL OF (PETITIONER GAVE SPECIFIC FACTS THAT INSPIRE DEBATABILITY AMONG REASONABLE JURISTS), PETITIONER'S COA ON 6-10-19, MERELY QUOTING SLACK VS. MCDANIEL AND MILLER-EL VS. COCKRELL'S ARTICULATION OF COA STANDARD OF REVIEW, AND CONCLUSORY ALLEGATION STATING "PETITIONER HAS NOT MADE THE REQUIRED SHOWING FOR A COA", WITHOUT ANY INDICATION ON HOW PETITIONER FAILED, OR WHETHER SAID COURT ACTUALLY APPLIED, PROPER REVIEW OF THE ISSUE OF DEBATABILITY, PURSUANT TO 2253(c) STANDARD OF REVIEW., PURSUANT TO AEDPA - STANDARD OF REVIEW THE NORTHERN DISTRICT OF TEXAS DALLAS DIV. COURT, HANDED DOWN AN UNJUST RULING ON 10-30-18, THE MERITS OF PETITIONER'S FEDERAL HABEAS CORPUS PETITION CLAIMS THEREIN, TO WIT: BATSON CLAIM, JACKSON CLAIM, AND INEFFECTIVE ASSISTANCE OF COUNSEL, IN WHICH JUDGE SAM A. LINDSAY, UPHELD THE RECOMMENDATIONS OF MAGISTRATE JUDGE IRMA CARRILLO RAMIREZ TO DENY WITH PREJUDICE, PETITIONERS SAID CLAIMS, THE TEXAS COURT OF CRIMINAL APPEALS ON 8-3-16 GAVE TYPICAL "WHITE CARD" DENIAL OF PETITIONERS STATE HABEAS CLAIMS, WHICH MIRROR THOSE ALLEGED, IN FEDERAL DISTRICT COURT (UNDER PROPER STANDARD OF REVIEW, OF COURSE), THE LAST ATTEMPT TO APPEAL SAID CLAIMS WAS DENIED 7-25-19, BY A 3 JUDGE PANEL IN PETITIONER'S "REQUEST FOR EN BANC HEARING" CONTESTING COA DENIAL, THUS, DUE TO AFOREMENTIONED DENIALS BY VARIOUS NAMED LOWER COURTS, PETITIONER MAINTAINS, HIS CONVICTIONS REMAINS FUNDAMENTALLY UNFAIR.

REASONS FOR GRANTING THE PETITION

PETITIONER MAINTAINS, THAT IN ACCORDANCE WITH DUE PROCESS, HE HAS A RIGHT TO HAVE HAD A TRIAL CONDUCTED WITHIN THE RUDIMENTARY DEMANDS OF FAIR PROCEDURE REEDS VS. FARLEY - 114 S.CT AT 2297; U.S.C.A. CONST. AMEND'S. 5, 14. IN HIS CASE AT HAND, THIS DIDN'T HAPPEN, IN THAT THE VIOLATIONS OF HIS BASIC FUNDAMENTAL RIGHT'S TO IMPARTIAL JURY, NON-DISCRIMINATORY SELECTED JURY, EFFECTIVE ASSISTANCE OF COUNSEL, AND PROOF BEYOND REASONABLE DOUBT STANDARD, IS HOW HIS CONVICTIONS WAS SECURED, ON DATE IN QUESTION. U.S.C.A CONST. AMEND'S 5, 6, 14.

HOWEVER, A VERY IMPORTANT QUESTION THAT AFFECTS SIMILARLY SITUATED LITIGANTS IN PETITIONERS POSITION, AND POSSIBLY OF NATIONAL IMPORTANCE, IS THIS COURTS EMPHASIS ON "INNOCENCE" BEING THE PREFERRED CHARACTERISTIC OF "FUNDAMENTAL FAIRNESS", SCHLUP VS. DELO - 115 S.CT AT 864-865 (1995), AND LEGITIMATE CONCERNS OF "BALANCING SOCIETAL INTERESTS, IN FINALITY, COMITY, AND CONSERVATION OF SCARCE JUDICIAL RESOURCES, WITH INDIVIDUAL INTERESTS, IN JUSTICE ARISING IN EXTRA ORDINARY CASES". 115 S.CT AT 865.

THUS, IN SEEKING RELIEF, IN THIS PARTICULAR CASE AT HAND, PETITIONER RESPECTFULLY CALLS ON THIS COURT TO SHOW, THAT, HOWEVER RELEVANT SAID CONCERNS ARE, AS DEFENDERS OF THE UNITED STATES CONSTITUTION AND LAWS THEREIN, THIS COURT, ALONG WITH THE "MISCARRIAGE OF JUSTICE EXCEPTION", IT WILL GRANT RELIEF ALSO, TO A VALID CLAIM THAT A CONVICTION WAS OBTAINED DEVOID OF THE RUDIMENTARY DEMANDS OF FAIR PROCEDURE" REED: 114 S.CT AT 2297. U.S.C.A. CONST. AMEND 5, 14, AS ENSURANCE TO U.S. CITIZENS SIMILARLY SITUATED, TO PETITIONER'S CASE, SUCH INFERENCES, IS SUPPORTED BY, FOLLOWING SUPREME COURT PRECEDENTS, TO WIT: "THERE ARE CONTEXTS IN WHICH, IRRESPECTIVE OF GUILT OR INNOCENCE, VIOLATE FUNDAMENTAL FAIRNESS" SAWYER VS. WHITLEY: 112 S.CT AT 2530 (1992); "ALTHOUGH A CONSTITUTIONAL CLAIM THAT MAY ESTABLISH INNOCENCE, IS CLEARLY THE MOST COMPELLING CASE FOR HABEAS REVIEW, IT'S BY NO MEANS THE ONLY TYPE OF CONSTITUTIONAL CLAIM THAT IMPLICATES "FUNDAMENTAL FAIRNESS", MURRAY VS. CARRIER - 106 S.CT. AT 2652 n.8, ALSO, ROSE VS. CLARK - 106 S.CT. AT 3111 "OUR SYSTEM OF CRIMINAL JUSTICE, PROTECT OTHER VALUES, BESIDES THE RELIABILITY OF GUILT OR INNOCENCE DETERMINATION" U.S. C.A. CONST. AMEND. 14., AGAIN IMPORTANT. IS MANY LITIGANT'S IN PETITIONER'S SITUATION, HAVE THE IMPRESSION, THIS COURT COULD CARE LESS ABOUT "INDIVIDUAL FUNDAMENTAL CONSTITUTIONAL RIGHTS", IN FAVOR OF ONLY "INNOCENCE" CLAIMS, AND VARIOUS LOWER COURTS IN TURN "THUMB THEIR NOSES" AT VALID CLAIMS THAT SHOWS A TRIAL HAS BEEN CONDUCTED, INCONSISTENT WITH RUDIMENTARY DEMANDS OF FAIR PROCEDURE, THIS IS A FLAGRANT DISREGARD, OF THE VERY ESSENCE OF DUE PROCESS U.S.C.A. CONST. AMEND'S 5, 14. BECAUSE, IN PETITIONER'S PARTICULAR CASE AT HAND, AND A NUMBER OF OTHER SIMILARLY SITUATED CASES, HAD THE TRIAL BEEN CONDUCTED WITHIN PROPER REQUIREMENTS OF FAIR PROCEDURE, "INNOCENCE" WOULD MANIFEST ITSELF, WITHOUT FURTHER INQUIRY. IN THE CASE AT HAND, THE CONCLUSORY DENIAL OF PETITIONER'S COA, BY THE FIFTH CIRCUIT COURT OF APPEALS, SHOULD BE UNACCEPTABLE. FELKNER VS. JACKSON - 131 S.CT AT 1307, IN THAT SAID DENIAL CONFLICTS WITH RELEVANT DECISIONS BY THIS COURT. FIRST OF WHICH, IS BATSON VS KENTUCKY - 106 S.CT AT. 1718, WHERE THIS COURT ORDAINED, "THE CONSTITUTION PROHIBITS ALL FORMS OF PURPOSEFUL RACIAL SELECTION IN SELECTION OF JURORS" ID.

PURSUANT TO 2253(c) STANDARD OF REVIEW; THE FIFTH CIRCUIT COURT WAS SUPPOSSED TO GIVE AN "OVERVIEW OF THIS CLAIM, AND A GENERAL ASSESSMENT OF THE MERITS." HUGHS VS. DRETKE - 412 F.3d AT 588 (5TH CIR. 2005); MILLER-EL VS. COCKRELL - 123 S.CT AT 1039 (2003), THUS, WHAT SHOULD HAVE BEEN FOUND THAT INSPIRES DEBATABILITY AMONG JURIST OF REASON, AS TO WHETHER THE NORTHERN DISTRICT OF TEXAS COURT'S DENIAL OF THIS CLAIM WAS CORRECT, IS THAT PETITIONER GAVE SPECIFIC FACTS, SHOWING A DENIAL OF HIS U.S CONSTITUTIONAL RIGHTS TO IMPARTIAL JURY THAT'S NON-DISCRIMINATORILY SELECTED U.S.C.A CONST. AMEND'S 5, 14 "BATSON" 106 S.CT AT 1717-1725; PROSECUTORS IN HIS TRIAL SUCCESSFULLY ASSEMBLED A PARTIAL JURY AFTER DISCRIMINATORY STRIKES DURING VOIR DIRE. NAMELY JUROR 32. MATTYE BOEH, WHO WITHOUT OBJECTION OR REHABILITATION GOT TO SIT ON PETIT JURY. AFTER ADMITTING HAD PETITIONER EXERCISED HIS FIFTH U.S AMENDMENT RIGHT NOT TO TESTIFY, HE WOULD HAVE HELD THAT AGAINST HIM, VOL. 2 REPORTER'S RECORD PAGES 101-102, DISCRIMINATORY STRIKES WERE COMMITTED DURING VOIR DIRE WHEN FOUR JURORS HAD TO BE "REHABILITATED". NON-AFRICAN AMERICAN JURORS 26 JOHN D. LEDFORD AND 21 GLORIA VANDUSEN ADMITTED BIAS, THEY WOULDN'T BELIEVE ANYTHING ONE TESTIFIES, IF AFTER TESTIMONY, THEY FOUND HE WAS PREVIOUSLY CONVICTED, VOL. 2 REPORTERS RECORD PAGES 102-103, TWO AFRICAN-AMERICANS JUROR 6 YOLANDA ANGTON AND 48 DANIEL HENDERSON ANGTON COULDN'T GIVE FIRST-TIME OFFENDER 20 YRS IN PRISON AND REQUIRE PROOF OF POSSESSION IN CASE AT HAND. HENDERSON BELIEVE THE JUSTICE SYSTEM WAS UNFAIR SOMETIMES, AND HAD FAMILY THAT HAD BAD EXPERIENCES WITH POLICE. PROSECUTOR'S AUTOMATICALLY ALLOWED LEDFORD AND VANDUSEN TO SIT ON PETIT JURY, PROSECUTOR NOVAK EVEN TOLD MS VANDUSEN "SHE HAD THAT RIGHT" AFTER SHE STATED SHE WOULD STILL DOUBT PETITIONER'S TESTIMONY PAGE 129 VOL 2 REPORTERS RECORD. KNOW JURORS MUST BE OPEN MINDED AND PERSUADABLE WITH NO EXTREME OR ABSOLUTE POSITIONS REGARDING ANY WITNESS." TIJERINA VS. STATE - 202 S.W.3d AT 302-304 (TX APP. 2006) WHILE THE LAW MAY ACCEPT THAT A PERSON MAY BE DOUBTFUL OF CONVICTED FELONS TESTIMONY, IT MANDATES JURORS TO LAY ASIDE IMPRESSIONS OR BELIEFS. A BASE A VERDICT ONLY ON EVIDENCE PRESENTED IN A TRIAL VIRGIL VS. DRETKE - 446 F.3d AT 611-614 (C.A.5. (TX.) 2006); IRVIN VS DOWD - 81 S.CT AT 1643-1644

HOWEVER, PROSECUTORS TOOK TIME TO IN-DEPTH QUESTION, BOTH AFRICAN-AMERICAN'S ABOUT THE LAWS REQUIREMENT THAT THEY MUST LAY ASIDE ANY BIAS AND JUDGE PETITIONER BASED ON EVIDENCE PRESENTED AT TRIAL, AND BOTH ENSURED THEY COULD JUDGE FAIRLY VOL. 2 REPORTERS RECORD PAGES 119-123, 132-134 MS. ANGTON WAS EVEN DEEM QUALIFIED TO SERVE ON JURY BY PRESIDING JUDGE, YET SHE AND HENDERSON WERE AUTOMATICALLY STRUCK IN FAVOR OF NON-AFRICAN-AMERICAN JURORS WHO WERE GIVEN THE BENEFIT OF DOUBT OF THEIR ABILITY TO JUDGE FAIRLY, AND WITHOUT IN DEPTH DETAILED QUESTIONING, ABOUT LAWS REQUIREMENTS OF LAYING ASIDE BIAS AS PRESCRIBED IN "IRVIN" 81 S.CT. AT 1644; THUS, THESE ACTIONS DO INSPIRE DEBATABILITY AMONG JURIST OF REASON, AS TO WHETHER THE NORTHERN DISTRICT OF TEXAS DENIAL OF THIS CLAIM, IS CORRECT. 2253(c); "MILLER-EL" - 123 S.CT AT 1039, SAID COURT FURTHER RULED, ALONG WITH THE STATE HABEAS COURT, THAT PETITIONER'S "BATSON CLAIM" IS PROCEDURALLY BARRED, DUE TO SAID CLAIM NOT BEING RAISED ON DIRECT APPEAL * DORSEY VS. QUARTERMAN - 494 F.3d AT 532 (CA.5. (TX.) 2007). HOWEVER, PETITIONER CONTENDS THAT THE EQUITY OF A VALID BATSON CLAIM OVERRIDES, SUCH A PROCEDURAL BAR, THOUGH REGULARLY RELIED ON BY STATE COURTS; "BATSON" RISES TO A LEVEL OF STRUCTURAL ERROR, AND DEFIES HARM-LESS ERROR ANALYSIS, AND CAUSE AND PREJUDICE REQUIREMENTS, THOUGH IN BATISE VS STATE - 888 S.W.3d AT 13 (TX. CRIM APP 1994) TEXAS COURT OF CRIMINAL APPEALS COURT, STATED "NEITHER THE SUPREME COURT, NOR THIS COURT HAS EVER SQUARELY ADDRESSED THE QUESTION WHETHER BATSON ERROR IS SUBJECT TO CONSTITUTIONAL HARM ANALYSIS". HOWEVER, PETITIONER BELIEVES "BATISE" AND THE STATE AND SAID FEDERAL HABEAS COURT IN HIS PARTICULAR CASE ALONG WITH FIFTH CIRCUIT COURT'S DENIAL OF HIS COA. ALL

CONFLICT WITH RELEVANT DECISIONS OF THIS COURT. TO WIT: "BATSON" ITSELF 106 S.Ct AT. 1716 n. 3 "THE BASIC PRINCIPLES PROHIBITING EXCLUSION OF PERSONS FROM PARTICIPATION IN JURY SERVICE ON ACCOUNT OF THEIR RACE ARE ESSENTIALLY THE SAME FOR GRAND JURIES AND FOR THE PETIT JURIES". (THIS COURT RULED GRAND JURY DISCRIMINATORY SELECTION STRUCTURAL ERROR IN "VASQUEZ VS HILLERY" - 106 S.Ct 621, 622-24) VASQUEZ VS HILLERY - 106 S.Ct AT 623 (1986) THIS COURT RULED " WHEN A PETIT JURY HAS BEEN SELECTED UPON IMPROPER CRITERIA, WE HAVE REQUIRED REVERSAL OF THE CONVICTION. BECAUSE THE EFFECT OF THE VIOLATION CANNOT BE ASCERTAINED" IN DAWSON VS. DELAWARE - 112 S.Ct AT 1099 (1992) IN A CONCURRING OPINION, IT WAS SHOWN " THIS COURT PREVIOUSLY HAS DECLINED TO APPLY HARM-LESS ERROR ANALYSIS TO CERTAIN CATEGORIES OF CONSTITUTIONAL ERROR, FIRST NAME WAS BATSON VS. KENTUCKY - 106 S.Ct AT 1725 (RACIAL DISCRIMINATION IN PETIT JURY SELECTION). THUS, IT SHOULD BE CLEAR THAT THE STATE PROCEDURAL BAR OF "FAILING TO RAISE BATSON ON DIRECT APPEAL", DOESN'T TRULY STOP THIS COURT, NOR LOWER FEDERAL COURTS FROM CONSIDERING THE FEDERAL QUESTION OF BATSON CLAIM WHICH IS "STRUCTURAL" IN NATURE, AND BLANTANT DENIAL OF DUE PROCESS. v LEE VS. KEMNA - 122 S.Ct. AT 880 (2002) THIS COURT CLEARLY RULED "ORDINARILY, VIOLATION OF FIRMLY ESTABLISHED AND REGULARLY FOLLOWED STATE RULES WILL BE ADEQUATE TO FORECLOSE REVIEW OF A FEDERAL CLAIM IN A STATE CASE; HOWEVER, THERE ARE EXCEPTIONAL CASES, IN WHICH EXHORBITANT APPLICATION OF A GENERALLY SOUND RULE, RENDERS THE STATE GROUND INADEQUATE TO STOP CONSIDERATION OF A FEDERAL QUESTION". ALSO, DAVIS VS. WECHSLER - 44 S.Ct AT 15-17 ("WHATEVER SPRINGES THE STATE MAY SET, FOR THOSE WHO ARE ENDEAVORING THE ASSERT RIGHTS THAT THE STATE CONFERS, THE ASSERTION OF FEDERAL RIGHTS, WHEN PLAINLY AND REASONABLY MADE, IS NOT TO BE DEFEATED UNDER THE NAME OF LOCAL PRACTICE"). IN LIGHT OF ALL AFOREMENTIONED PRECEDENT'S BY THIS COURT, PETITIONER MAINTAIN'S THAT THE CONCLUSORY DENIAL OF HIS COA ON THE ISSUE OF HIS BATSON CLAIM, VIOLATES BOTH HIS SUBSTANTIAL AND PROCEDURAL DUE PROCESS RIGHT'S U.S.C.A. CONST. AMEND'S. 5, 14. SAID COURT SHOULDN'T BE ALLOWED TO BE CONCLUSORY IN IT'S DECISION MAKING. FELKNER VS JACKSON 131 S.Ct AT 1307 (2011)

PETITIONER CONTENDS THAT THE CONCLUSORY DENIAL OF HIS COA, CONFLICT'S WITH RELEVANT DECISION'S OF THIS COURT IN JACKSON VS. VIRGINIA 99 S.Ct AT 2789 (1979) THIS COURT MADE IT CLEAR THAT, "THE FACT FINDER'S ROLE AS WEIGHER OF THE EVIDENCE IS PRESERVED THROUGH A LEGAL CONCLUSION, THAT UPON JUDICIAL REVIEW ALL OF THE EVIDENCE IS TO BE CONSIDERED IN LIGHT MOST FAVORABLE TO THE PROSECUTION, THE CRITERION, THUS, IMPINGES UPON "JURY" DISCRETION ONLY TO THE EXTENT NECESSARY TO GUARANTEE THE FUNDAMENTAL PROTECTION OF DUE PROCESS OF LAW" U.S.C.A. CONST. AMEND 14. . IN LIGHT OF SAID PRECEDENT. IT'S CLEAR DUE PROCESS REQUIRES REVIEW OF ALL THE EVIDENCE, AND NOT JUST THE EVIDENCE THAT MAY POSSIBLY IMPLY GUILT. THAT IS A RATIONAL JURY CONSIDER'S ALL THE EVIDENCE AND EVEN THOUGH A REVIEWING COURT MUST VIEW THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION, WE MUST NEVER THE LESS VIEW ALL THE EVIDENCE NOT JUST THAT EVIDENCE FAVORABLE TO THE PROSECUTION" WINNINGHAM VS. STATE - 334 S.W.3d AT 316 (TX. APP 2010); U.S VS. NGUYEN - 504 F.3d AT 567 (C.A.5 (TX) 2007), WHAT MAKES THE FIFTH CIRCUIT COURT'S SAID DENIAL OF PETITIONER'S "JACKSON CLAIM" CLEARLY ERRONEOUS I'S DEBATABILITY. CAN BE INSPIRED AMONG JURIST OF REASON. THE NORTHERN DISTRICT MAGISTRATE JUDGE IRMA CARRILLO RAMIREZ IN HER ASSESSMENT OF THE MERIT'S OF PETITIONER'S JACKSON" CLAIM. MERELY QUOTED THE "WEIGHT AND CREDIBILITY" DEFERANCE ASPECT OF JACKSON AND CONDENSED EVENTS AND FACTS OF EVIDENCE TO INFER GUILT, NOWHERE IN HER ASSESS-

MENT DOES SHE ADHERE TO DUE PROCESS REQUIREMENT PROSCRIBED IN "JACKSON" TO REVIEW ALL THE EVIDENCE, BUT MERELY QUOTES A PORTION OF 'JACKSON' THAT PERTAINS TO 'WEIGHT" AND "CREDIBILITY" DEFERENCE OWED TO THE JURY?, WHICH UPON ANY EXAMINATION OF THE CURRENT AND PREVIOUS MERITS OF PETITIONERS ARGUMENTS ON THIS CLAIM HAS NEVER BEEN ON WEIGHT NOR CREDIBILITY, BUT THE RATIONALITY OF THE JURY'S VERDICT, IS WHAT THE PETITIONER HAS ATTACK, SINCE THE INCEPTION OF THE APPEAL OF HIS CONVICTION, THUS TO DATE NONE OF THE LOWER COURTS INCLUDING THE FIFTH CIRCUIT IN DENYING COA RELIEF, HAS ADHERED TO JACKSON'S DUE PROCESS REQUIREMENT, OF ALL EVIDENCE BEING REVIEWED "THE JURY IS FREE TO BELEIVE OR DISBELIEVE EVIDENCE, BUT AFTER REVIEW OF "ALL" OF THE EVIDENCE BY APPELLATE COURTS, IT MAY BE APPARENT THAT THE JURYS ULTIMATE FINDING OF GUILT IS NOT RATIONAL" TEMPLE VS. STATE 342 S.W.3d AT 632-634 (TX APP 2010); MILES VS. STATE - 357 S.W.3d AT 631 (TX. CRIM. APP 2011); "JACKSON" 99 S.CT AT 2789-2991, THE EVIDENCE IN POSSESSION CASES OF PETITIONER, WAS MAINLY BASED ON "LINKS OR "AFFIRMATIVE LINKS DOCTRINE", USED IN CONTRABAND ORIENTED CASE LIKE PETITIONERS, USED TO AFFIRMATIVELY LINK DEFENDANTS TO CONTRABAND WHEN AS PETITIONERS CASE, THEIR NOT IN EXCLUSIVE POSSESSION OF PLACE, WHERE CONTRABAND IS FOUND. THE LINKS CAN NUMBER UP TO 11 EX. PROXIMITY TO DRUGS, PLAIN VIEW, FURTHERTIVE GESTURES ETC., YET, THE NUMBER OF LINKS IS NOT AS IMPORTANT AS, THE LOGICAL FORCE THE FACTORS HAVE IN ESTABLISHING THE ELEMENTS OF THE OFFENSE" U.S VS ROJAS ALVAREZ - 451 F.3d AT 324; HARGROVE VS STATE - 211 S.W.3d AT 386-387 (TX APP 2006), WITH THIS IN MIND, PETITIONER MAINTAINS THAT THE LOGICAL FORCE THE EVIDENCE IN HIS CASE HAS, GIVES EQUAL OR NEARLY EQUAL THEORY OF GUILT AND INNOCENCE THUS, HIS JURY'S VERDICT IS IRRATIONAL BECAUSE "REASONABLE DOUBT" MUST BE ENTERTAIN, IN SUCH CASES, U.S VS ELASHI - 440 F.SUPP.2d. AT 514 (N.D TX 2006); U.S VS. LOPEZ-URBINA - 434 F.3d AT 757 (5TH CIR. 2005); WILSON VS STATE - 654 S.W.2d AT 467 (TX. CRIM. 1983); WINNINGHAM VS. STATE - 334 S.W.3d AT 312 (TX APP. 2010); ALSO, WINFREY VS. STATE - 323 S.W.3d AT 882 (TX. CRIM. APP 2010), IN LIGHT OF AFOREMENTIONED PRECEDENTS NOT ONLY IS THE FIFTH CIRCUIT'S DENIAL OF COA ON THIS ISSUE CLEARLY ERRONEOUS, BUT ALSO CLEARLY CONFLICTS WITH THIS COURTS CLEARLY ESTABLISH LAW AS DECIDED IN JACKSON VS. VIRGINIA 99 S.CT AT 2789-2791 (1979).

PETITIONER, CONTENDS, IN THIS FINAL ARGUMENT, THAT THE FIFTH CIRCUIT COURT OF APPEALS DENIAL OF HIS COA, CONFLICTS WITH RELEVANTS DECISION OF THIS COURT, IN AS DETERMINED IN THE CASE OF STRICKLAND VS. WASHINGTON - 106 S.CT AT 2069-2070, WHERE IT WAS ESTABLISHED IN SAID CASE, "A COURT NEED NOT DETERMINE WHETHER COUNSELS PERFORMANCE WAS. DEFICIENT, BEFORE EXAMINING PREJUDICE SUFFERED BY DEFENDANT AS A RESULT OF ALLEGED DEFICIENCIES" U.S. C.A. CONST. AMEND 6., AN EXAMINATION OF PETITIONERS TRIAL LAWYERS DEFICIENCIES, CAN REVEAL HIS OVERALL REPRESENTATION DID CAUSE PETITIONER A LEVEL OF PREJUDICE SUFFICIENT TO UNDERMINE ANY CONFIDENCE IN THE JURY'S VERDICT OF GUILTY, DUE TO THE FOLLOWING: UPON BEING APPOINTED TRIAL LAWYER HAD ONE REQUEST FROM PETITIONER THAT WOULD HAVE RELIEVED HIM OF ANY FURTHER LITIGATION, AND THAT WAS GET A RULING ON A ARTICLE 32.01 MOTION FILED PRO SE, BY PETITIONER, SAID ARTICLE IS FOUND IN TEXAS CODE OF CRIMINAL PROCEDURE, GROUNDED IN ART I § 21 TEXAS CONSTITUTION WHICH IS FOUNDED ON U.S CONSTITUTIONAL AMENDMENT 5. THIS STATUE ALLOWS A PERSON WHO'S IN JAIL OR ON BAIL OVER 180 DAYS OR PAST NEXT TERM OF COURT TO BE RELEASED FROM SUCH LIBERTY RESTRAINTS UNTIL AN INDICTMENT IS RETURN IF PROSECUTOR DOES NOT SHOW GOOD CAUSE FOR DELAY" EX PARTE COUNTRYMAN - 180 S.W.3d AT 422 PETITIONER WAS WELL PAST 180 DAY LIMITATION IN SAID ARTICLE, WHEN HE FILED HIS MO-

TION; THUS; THE ONLY TRUE JURISDICTION INDICTMENTS CONFERRED TO TRIAL; UPON RETURN IN THE CASE AT HAND; WAS LIMITED TO WHY THEY WEREN'T TIMELY FILED; AND LAWYER'S ALLEGATIONS OF MOOTNESS ALONG WITH STATE HABEAS COURT IS CONTRADICTED BY VARIOUS CASE LAW TO WIT: EX PARTE MANN - 34 S.W.3d AT 718 (TX APP 2000); NORTON VS. STATE - 918 S.W.2d AT 28 EX PARTE COUNTRY MAN - 180 S.W.3d AT 422 (TX APP. 2005); EX PARTE MARTIN - 33 S.W.3d AT 846 (TX. CRIM APP. 2000); SAID LAWYER'S FAILURE TO GET A MOTION FOR DISCOVERY WAS CRUCIAL TO GET RULED UPON; WITHOUT THE STATE CREATIVELY GOT TO VIOLATE PETITIONER'S RIGHTS TO CROSS-EXAMINATION PURSUANT TO CRAWFORD VS. WASHINGTON 124 S.CT AT 1364 (2004) WHEN PROSECUTOR CONFERRED TO JURY DURING BOTH GUILT AND INNOCENCE AND PUNISHMENT PHASES OF PETITIONER'S TRIAL AS TO ADMISSION'S AND IMPLICANTION'S OF GUILT BY DOMINIQUE SHARPER ACCOMPLICE IN MARIJUANA INDICTMENT & SEE VOLUMES 4 REPORTERS RECORD PAGES 55-56 AND VOLUME 5 REPORTER'S RECORD PAGES 55-56 167; PETITIONER'S CASE EVOLVED AROUND HIS SUPPOSED POSSESSION OF MARIJUANA AND GUN; SHARPER'S ADMISSION OF GUILT WAS A FACT ISSUE DURING DELIBERATION'S OF JURY; THAT WAS KEPT FROM CONSIDERATION UNTIL AFTER THE VERDICT PAGE 62 VOL. 5 R.R; ALLEGATION'S SHARPER TOLD POLICE PETITIONER POSSESSED MARIJUANA AND GUN WAS CONFERRED TO JURY PAGES 55-56 VOL 4 R.R THUS, SHARPER SHOULD HAVE BEEN SUBPOENAED; AN AFFIDAVIT OR OTHERWISE TO TEST CREDIBILITY OF HIS TESTIMONIAL STATEMENT'S TO POLICE "CRAWFORD" AT 124 S.CT AT 1364, A RULING ON A MOTION FOR DISCOVERY WAS THEREFORE CRUCIAL; IN PRODUCING WITNESS STATEMENTS OR SHARPER HIMSELF; SINCE WHAT HE SAID AND NOT COULD HAVE SAID WAS CONFERRED TO JURY ON DATE IN QUESTION WITHOUT PROPER OBJECTION'S; TRIAL LAWYER'S EXCUSE WAS THE "STATE" GAVE HIM ALL THE DISCOVER EVIDENCE HE NEEDED? IN A 1 PAGE AFFIDAVIT HE GAVE TO STATE HABEAS COURT IN HIS DEFENSE JULY 7. 2016 HOWEVER THE SAID GESTURE BY THE STATE DID NOT RELIEVE SAID LAWYER FROM MUCH NEEDED INDEPENDENT INVESTIGATION; THERE WAS ENOUGH TANGIBLE EVIDENCE THAT WAS NOT FINGER PRINTED; NOR BALLISTICALLY TESTED (GUN, DIGITAL SCALE, TUPPER WARE, ETC.) THAT AS PLAINLY CAN BE SEEN; A SIMPLE MOTION FOR DISCOVERY COULD HAS SUFFICED IN GET SAID ITEM'S AUTHENTICATED; TESTED FOR RELIABILITY AND CREDIBILITY PURPOSES PETITIONER'S LAWYER CAUSED HIM SEVERE PREJUDICE RELING ON EVIDENCE AND INVESTIGATION'S DIVINED FROM STATES WORK WHICH HAS BEEN PROVEN IN PAST CASES TO CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL & SEE ANDERSON VS. JOHNSON - 338 F3d AT 392-393 (5TH CIR 2003); ALSO, BRYANT VS SCOTT - 28 F.3d AT 1418 (5TH CIR. 1994); AGAIN IMPORT, AS ALLEGED IN SAID AFFIDAVIT OF TRIAL LAWYER, IT MADE NO SENSE AT ALL FOR PETITIONER'S TRIAL LAWYER TO "STRONGLY" ADVISE HIM NOT TO TAKE THE STAND AND TESTIFY FOR HIMSELF, AND YET ALLOW WITHOUT ANY OBJECTION, A JUROR TO SIT ON PETIT JURY, WHO WOULD HELD IT AGAINST PETITIONER FOR NOT TESTIFYING NAMELY JUROR 32 MATTYE BOOTH VOL 2. REPORTER RECORD PAGES 101-102. AS POINTED OUT IN "OBJECTION'S TO MAGISTRATES REPORT AND RECOMMENDATIONS" FILED 8-7-18 BY PETITIONER; FINALLY, IN "STRICKLAND" 104 S.CT AT 2056, THIS COURT ALSO MADE CLEAR, "THE ULTIMATE FOCUS OF INEFFECTIVENESS INQUIRY MUST BE ON THE FUNDAMENTAL FAIRNESS OF THE PROCEEDINGS WHOSE RESULTS IS BEING CHALLENGED" U.S.C.A. CONST. AMEND. 6; THE ACTIONS OF PETITIONER'S TRIAL LAWYER, COUPLED WITH HIS OTHER AFOREMENTIONED VIOLATIONS OF HIS BASIC FUNDAMENTAL CONSTITUTIONAL RIGHTS CLEARY SHOULD HIS TRIAL WAS NOT CONDUCTED WITHIN THE FUNDAMENTAL FAIRNESS DOCTRINE NOR, RUDIMENTARY DEMANDS OF FAIR PROCEDURE. AS TO THIS INEFFECTIVE ASSISTANCE CLAIM THE STATE HABEAS COURT ALONG WITH NORTHERN DISTRICT COURT DALLAS DIV. HAS ALLOWED A CONCLUSORY 1 PAGE AFFIDAVIT BY MATTHEW BRNOLA TRIAL LAWER FOR PETITIONER FILED JULY 7. 2016, BE THE DETERMING FACTOR AS TO HIM RELEVING EFFECTIVE ASSISTANCE OF COUNSEL, WHICH IS DEBATABLE AMONG REASONABLE JUSRIST. AS TO

WHETHER THE SAID FEDERAL HABEAS COURT IN THIS MATTER WAS CORRECT IN DENING SAID INEFFECTIVENESS CLAIM OF PETITIONER'S, AND THE CONCLUSORY DENIAL OF HIS COA BY FIFTH CIRCUIT COURT OF APPEALS REMAINS UNACCEPTABLE. DUE TO DEBATABLITY INSPIRED BY PARTICULAR CLAIMS OF PETITIONER, AND THE FACT, BY DEFINITION A "CONSTITUTIONAL RIGHT" IS A RIGHT (IN THIS CASE) GUARANTEED BY THE UNITED STATES CONSTITUTION, SURELY UPON SINCERE REVIEW OF PRESENT AND PAST MERITS OF PETITIONERS SAID CLAIMS, IT CAN BE FOUND, HIS CONVICTION WAS SECURED, THROUGH THE VIOLATION OF PETITIONER 5TH, 6TH, AND 14TH UNITED STATES CONSTITUTIONAL RIGHTS. FOR SAID REASONS, PETITIONER HUMBLY SEEKS RELIEF IN THIS COURT THROUGH THIS PETITION FOR A WRIT OF CERTIORARI.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Malcolm McClenon

Date: 9-10-19