No. 19-6096

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY SIMMONS
*Plaintiff*

VS.

DARREL VANNOY
*Defendants*

PETITION FOR RECONSIDERATION/REHEARING OF WRIT OF CERTIORARI

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Jerry Simmons #593386
Louisiana State Penitentiary
Angola, La., 70712

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Petition for Reconsideration of writ of certiorari to the United States Supreme Court from the Denial of writ of certiorari

**MEMORANDUM IN SUPPORT**

Petitioner "prays" for Reconsideration of Writ of Certiorari, denied December 9, 2019 by this United States Supreme Court in the above entitled proceeding be granted.

In particular, Petitioner request reconsideration on his "supported" claims that he

1.) Was Constructively Denied Assistance of Counsel for His Defense, **Gideon v. Wainwright,** 372 U.S. 335, 83 S.Ct. 792, 9L.Ed.2d 799 (1963): **U.S. v. Cronic**, 466 U.S. 648 (1984) and **Powell v. Alabama**, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932)

2.) Denied His Right of Self-representation **Faretta v. California,** 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975): **McKasklev. Wiggins,** 465 U.S. 168, 177, n. 6, 104 S.Ct. 944, 79 L.Ed.2d 122 (U.S. Tex. 1984) and

3.) Was Tried by a Bias Judge, **Tumey v. Ohio**, 273 U.S. 510, 535, 47 S.Ct. 437, 71 L.Ed. 749: **Caperton v. A.T. Massey Coal Co., Inc.,** 556 U.S. 868, 129 S.Ct. 2252,(U.S. W.Va. 2009)

Mr. Simmons' further request "reconsideration" on his claims of Denial of His Right To Present a Defense and Denial of His Right of Compulsory Process. **Washington v. Texas,** 388 U.S. 14 (1967): **Crane v. Kentucky**, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)

Mr. Simmons request this Reconsideration of denial of writ to determine 1.) whether "this particular Conviction" was Obtained in Violation of United State Constitution, and Federal law as determined by this Honorable United States Supreme Court, entitling him to relief under 28 U.S.C. § 2254(d)(1) and 2.) whether his fundamental rights, as determined by the United States Supreme Court were applicable to the state of Louisiana during his 2010-2011 state criminal prosecution.

## JURISDICTION

This Honorable United States Supreme Court has jurisdiction to hear this petition under the United States Constitution Article 3 § 2, clause 1: Title 28, U.S.C.A. § 2254(d)(1) and **Hohn v. United States**, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (U.S. Neb. 1998).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense."

The United States Constitution, Amendment XIV, § 1: in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d)(1):

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

PROVISIONS CONTINUED

Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)

U.S. v. Cronic, 466 U.S. 648

Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 77 L.Ed 158 (1932)

Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)

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**FORMA PAUPERIS**

At the outset Petitioner request that his Petition To Proceed In Forma Pauperis utilized in his initial Application For Writ Of Certiorari be sufficient to allow review of his Petition For Reconsideration/Rehearing

**PETITION FOR RECONSIDERATION/REHEARING**

Where "a decision by this Court denying discretionary review 'usually signals the end of litigation"[1]..."usually" by definition is not the same as "always". Therefor, Petitioner relying on the principle "Basic to the operation of judicial system is the principle that [this] court speaks through it's judgments and orders" **Id**, S.Ct., at 2832. emphasize that this Court has determined a number of petitioner's substantial rights to be fundamental, deeply rooted and violation result in "structural error"

Throughout Petitioner's appellate and post criminal proceedings stages he has supported through the record the occurrence of all violations of these same rights as determined by this Honorable Court. See denied Writ, No. 19-6096, Apndx.-B, (Evid. Hrng Pp. 42-44 Ll, 15-16 (Judge Marcel) Your allegations are found on the record!!!(emphasis added)

Surely this same Court adheres to the philosophy found in **Bell**, which "*believe [the Court] should encourage, rather than discourage, an appellate panel, when it learns that it has made a serious mistake, to take advantage of an opportunity to correct it, rather than to ignore the problem*" U.S., at 826

From this foundation Petitioner argues where all his claims are found on the record, he has only been provided a less than disingenuous review by State and Federal Courts thus far. Furthermore he now brings it to this Honorable United States Supreme Court's attention with the expectation of correction and/or enforcement of his Fundamental rights as determined by this same Supreme Court, after it denied

1 Bell v. Thompson, 125 S.Ct. 2825, 2833 (U.S. 2005)

review.

Although this Court has held that it's denial of writ is not traditionally the same as a ruling on the merits, it still does not prevent lower courts from utilizing "writ denied" (by this or any other court) to deny relief to "**any**" criminal defendant at "**any**" stage of "**any**" criminal proceeding, citing writ denied. *Cf* **State of Louisiana v. Jerry Simmons**, 13 So.3d358, 13-258 La. App. 5 Cir. 2/26/14). found in a number of State's rulings; **State v. Brown**, 264 So.3d697, 704 n. 3 (2d Cir. 1/16/19): **State v. Perry**, 250 So.3d 1180, 1196 n. 32 (June 27, 2018): **State v. Lampton**, 249 So.3d 235, 245 n. 23 (5th Cir. May 23, 2018): **State v. Jamison**, 222 So.3d 908, 919 (5th Cir. May 17, 2017): **State v. Mickelson**, 210 So.3d 893, 899 n. 8,9 (2d Cir. 12/14/16): **State v. Alexander**, 197 So.3d 843, 851 n.8,9 (5th Cir. 7/27/16))[2]

Where it is federal courts manifest duty to "vindicate" the Accused Constitutional guarantees, Petitioner having now brought the denial and/or violation of his fundamental and deeply rooted rights by State and Federal courts to this Court's attention, he now logically ask, "If this Court refuse to enforce his constitutional guarantee then who?"

Petitioner noting relevant events from 2010-2019 across the nation; The issue and history of Black being shot multiple times by law enforcement, and state courts repeatedly being unable to secure convictions. Petitioner, in the instant case, out of prison for seven years unfortunately found himself charged with attempted murder of a police officer.

However this is not the issue, there has always been bad blood between Blacks (men, woman, and children) and not only police, but also a justified distrust of the judicial system, including this same United States Supreme Court. e,g.;

**CAUTION!!!**

Colored People of Boston, one and all.
You are hereby respectfully cautioned and advised, to avoid conversing with the Watchmen and the Police Officers of Boston...for since the recent order of the Mayor and Alderman[3], they are empowered

2 For brevity Petitioner will not compile a lengthy list

3 In some U.S. cities, a member of the municipal counsel, usually representing a certain district or ward Webster's New

to act as Kidnappers and Slave Catchers and they have already been actually employed in kidnapping, catching and keeping slaves. Therefor, if you value your liberty and the welfare of the fugitives among you, shun them in every possible manner, as so many hounds on the track of the most unfortunate of your race. Keep a sharp lookout for kidnappers and have top eye open.

The Black Book p. 27

The Persecution of Negroes in the Capitol—A Standing Revelation
The motive alleged for the capture of these negroes is a desire to have them kept in prison for a certain space of time-we think a year-and have them sold for the purpose of paying their cost. While we think it hardly possibly that a motive so base could actuate men occupying responsible position and administering justice, yet the evidence in the case, collected by Mr. Detective Allen and reported by him to Provost Marshal Porter, seems to prove the fact.

The Black Book p. 61

See **Regents Of The University Of California v. Bakke,** 98 S.Ct. 2733, 2799 (U.S. Cal. 1978)(*This Court recognizing it's assistance in stripping the negroe of his new found civil rights.*): *cf.* **Ramos v. Louisiana** No. 18-5924 ____ U.S. ____, 2019 LEXIS 1833 WL 1231752 (03/18/2019)(*The racist history intent of Louisiana's nonunanimuos jury verdict by it's legislatures*).

Again *cf.* Our Enemy In Blue, Kristian Williams

> During the 1920s, klansmen were enlisted to aid the authorities in their fight against the evils of alcohol and communism...In other places, klaverns were "*deputized for prohibition raids, and many cops signed up in the 'invisible' empire.*"...In 1922, when Los Angeles D.A., Thomas Lee Woolwine raided the Klan headquarters and seized their records, he discovered that Los Angeles Chief of Police, Louis D. Oaks; Sheriff Willians I. Truger, and U.S. Attorney, Joseph Burke were all connected to the Klan. The Police Chief and Police Judge in in nearby Bakersfield were both members, as were [seven] 7 Fresno Officers, twenty-five cops in San Francisco, and about a tenth of the Public Officials and Police in the rest of California. (emphasis added by Petitioner)

p. 103

> When the Klan was at it's peak of it's power in Colorado, it counted among it's members many prominent businessmen, state Representatives and Senators, the Colorado Secretary of State, four judges, two federal narcotics agents and "scores' of Police.

Ibid., p. 104.

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World College Dictionary 5th Ed, p. 34

Where the relied upon material clearly support that "members" of law enforcement and the "judiciary" were active members of the Klan and responsible for the enforcement of Black's Equal Protection of the law, these same officials were the key figures in the incarceration and deprivation of the rights of Blacks. More disturbing is where the Ku Klux Klan Act sought to hold these same officials responsible for their actions, (most time under color of law), including judges. The United States Supreme Court determined the language of the law that referenced "*Any person who under color of law...*" *did not mean judges, in the course of duty.*

Petitioner is of the mind set that this ruling was void due to being self-serving and repugnant to the Constitution "because United States Supreme Court Justices making the determination had a direct interest in the outcome of the decision" cf. **United Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott**, 463 U.S. 825, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (U.S. Tex. 1983)

Although this reflect the history between Blacks, law enforcement and the courts. A history that all citizens should know, especially Black citizens, Petitioner reiterates, "This is not the issue". The issue is "Whether Petitioner's conviction was obtained in violation of the United States Constitution?" And now that he has brought it to this Honorable United States Supreme Court's attention, seeking the enforcement of his Equal Protection of the Law, after this same United States Supreme Court has denied writ, what do Petitioner do?"; "What is the message sent to Black America in respect to law enforcement?

Before issuing the "traditional" denial of this Petition for Reconsideration of Denial of Writ of Habeas Corpus, it is "incumbent" upon this Honorable United States Supreme Court (where all Petitioner's claims are found in the records) to consider Petitioner's writ on the merits, issuing an "objectively ingenuous" opinion in accordance with 'this Court's' established precedence.

Housed in Petitioner's writ, supported by the record, including State's opinion is the claim that

Petitioner's right of self-representation was denied a number of times. "Court granted Mr. Simmons' third request to represent himself" see writ and attachment. Petitioner emphasizing where Trial court granted this right with less than thirty days to trial with no continuance, the denial of this "**Faretta**" right pre-trial is "structural error" mandating automatic reversal.

Housed in Petitioner's writ, supported by the record is that attorney maintaining relationship with the victim in the case (conflicted counsel) repeatedly informed Petitioner "I have no defense, no viable defense" **refused to assist in the presentation of Petitioner's only viable and supported defense**, request leave, or inform trial court of the relationship with victim. Denying Petitioner any assistance of counsel for his defense whatsoever. Attorney giving Petitioner the "ultimatum to choose" between counsel providing no actual assistance towards the defense **Cronic** or representing himself. See writ, and exhibits. Petitioner being provided "conflicted" counsel **Cuyler v. Sullivan**, 446 U.S. 335(1980); Constructive denial of counsel, "structural error" mandating automatic reversal.

Housed in Petitioner's writ, supported by the record is trial judge's rulings, comments and accompanying opinions, which include 1.) vouching for attorney, 2.) *After denying Petitioner's pretrial request for his hospital records, later granting same request to prosecutor at eve of trial solely to eliminate a future action by Petitioner and to secure the conviction.* 3.) *Informing Petitioner that expert witnesses are not available to him at public expense*, **Ake v. Oklahoma**, 470 U.S. 68, 105 S. Ct. 1087, 84 L. Ed 2d 53 (1980) 4.) Attributed attorney's failure to Petitioner who had made numerous request to be appointed substitute counsel, and 5.) *ruled on Petitioner's insanity at time of the offense.* See writ and attachments. Being tried by bias judge "structural error" mandating automatic reversal.

Where these acts, committed by those acting under color of law, in their official capacity, openly conflict with this Court's precedences and denied Petitioner equal protection of the law as well as due process, they are by no means all conclusive of the violation suffered Petitioner during the course of his state criminal prosecution.

Surely on some level the violation of Petitioner's rights raised to the level of constitutional dimension deserving correction. This Honorable United States Supreme Court "electing" to deny discretionary review constructively condone State and Federal Courts determination that these supported claims are unimportant. Including the supported allegation that prior to the incident Petitioner, a Black man in America had been getting stopped weekly by local law enforcement, or that although these weekly traffic citations were public record stored in the same courthouse in which Petitioner was tried, convicted and the attorney worked daily, that same court appointed attorney, who maintained a relationship with victim i.e. officer in the case was unable to locate these traffic citations during his representation. See writ and exhibits which include these weekly traffic citation.

It does not matter (now this United States Supreme Court has it "elects" to deny writ), that where Petitioner made allegations of harassment due to his community status, and that law enforcement officers were issuing fraudulent traffic citations, ***that after his conviction in 2011 the local media ran the story of deputies issuing fraudulent citations in the parish, as alleged by Petitioner***. See writ and exhibits.

The indignities that Petitioner suffered at the hands of the Louisiana courts would be enough to "justify" any person of color belief that "he has no right that the white man is bound to respect" or the court are bound to enforce. **Dred Scott v. Sanford**, 19 How. 393, 13 L.Ed. 691 (1857); See The New Jim Crow. by Michelle Alexander; CBS Morning News, December 17, 2019 two stories of interest. 1.) Supreme Court overturning conviction due to prosecutors' "**Baston**" challenge. 2.) White city officials participating in the destruction of Black Wall Street, in Tulsa Oklahoma.

I imagine, as many Blacks do, that not much has changed in this country in respect to the **Dred Scott** decision. "Some" State officials (With this Court's condoning or Without "This" Court's intervention) will always show that they cannot be trusted to enforce the rights of a segment of society "historically discriminated against."

I am of the firm belief that my case, involving a police officer, and an indigent person of color is not only a message, but *The Archetypical Reality To Any Black Person Who Having Become Mentally Overborne Forgets His Place.*

## CONCLUSION

**WHEREFORE**, having brought and supported the violation of his Constitutional guarantees to this Court's attention, Petitioner concludes without this Honorable United States Supreme Court's continued intervention "future" violation by Louisiana and other states will undoubtedly continue, as a result of the "conscious" foresight (knowledge) by those acting under color of law that this Court will deny discretionary review to an astronomical amounts of writs. A favorable percentage in which any gambler would "repeatedly" accept.

The issues presented in Petitioner's writ which this United States Supreme Court has denied review are ripe to make a showing to the world that this Honorable United States Supreme Court is aware of the disparity in the enforcement of substantial right of those less fortunate and will not sit idle in the face of such.

Respectfully Submitted;

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