

No. _____

19-6122

IN THE

SUPREME COURT OF THE UNITED STATES

Jermaine Stevenson — PETITIONER

(Your Name)

vs.

Jeffrey Woods, Warden — RESPONDENT(S)

FILED

SEP 24 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES APPEALS COURT SIXTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Jermaine Stevenson

(Your Name)

Chippewa Correctional Facility 4269 W M-80

(Address)

Kincheloe, Michigan 49784

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

CAN A HABEAS CORPUS PETITIONER THAT IS PRESUMED GUILTY PURSUANT TO A STATE COURT JUDGMENT MAKE A SHOWING OF ACTUAL INNOCENCE WITH NEWLY DISCOVERED EVIDENCE THAT MAKES THE STATE JUDGMENT VOID AND RESTORES THE PETITIONER'S PRESUMPTION OF INNOCENCE?

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 AUTHORITIES CITED

CASES	PAGE NUMBER
Coffin v. United States, 156 US 432, 15 S Ct 394, 39 L. Ed 481(1894)	...8
Estelle v. Williams, 425 US 501, 96 S Ct 1691, 48 L. Ed 2d 126(1976)	...8
In re Winship, 397 US 358, 90 S Ct 1068, 25 L. Ed 2d 368(1970)	...8
Herrera v. Collins, 506 US 390, 113 S Ct 853, 122 L. Ed 2d 203(1993)	...9
Schulp v. Dolo, 513 US 298, 115 S Ct 851, 130 L. Ed 2d 808(1995)	...9

STATUTES AND RULES

28 U.S.C. § 2244(d)(1)

United States Supreme Court Rule 10(c)

OTHER

Black's Law Dictionary

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A : Sixth Cir. U.S. Court of Appeals Opinion

APPENDIX B : U.S. Dist. Court, W.D. Michigan Opinion

APPENDIX C : Michigan Supreme Court Opinion

APPENDIX D : Wayne County Circuit Court Opinion

APPENDIX E : Sixth Cir. U.S. Court of Appeals Rehearing
Denied Order

APPENDIX F : New Evidence received from Juvenile Court
Clerk (register of Actions & Court orders)

APPENDIX G : Michigan Court of Appeals Order

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 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 United States district court appears at Appendix B to the petition and is

reported at 2019 U.S. DIST LEXIS 18128; 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 C to the petition and is

reported at People v Stevenson, 499 Mich 983; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Wayne County Third Judicial Circuit court appears at Appendix D 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 Michigan Court of Appeals appears at Appendix G to this petition and is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 31, 2019.

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: July 31, 2019, and a copy of the order denying rehearing appears at Appendix E.

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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was July 26, 2016. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: _____, 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

United States Const. Amendment 14 § 1

28 U.S.C. § 2244 (d)(1)

United States Supreme Court Rule 10(c)

STATEMENT OF THE CASE

Petitioner Stevenson filed a federal habeas corpus petition under § 2254 in the Western District for Michigan. Stevenson filed a miscarriage of justice gateway claim as an exception to the statute of limitations of § 2244(d)(1) so that the court would proceed on the merits of his constitutional claims. The magistrate judge issued an R & R recommending that the petition be dismissed as time barred finding that Petitioner had not established actual innocence because he offered no evidence that made it more likely than not that no reasonable juror could vote to convict him. Petitioner filed objections pointing to the fact that he submitted new evidence that the trial court lacked personal jurisdiction to convict him. The void judgment would void the conviction thereby restoring his presumption of innocence, and that no reasonable juror could vote to convict him because the court had no legal authority to make him appear in court on the charges. The district court overruled Stevenson's objections. Stevenson applied to the Sixth Circuit U.S. court of appeals for a COA asserting that the district court erroneously determined that he had not established his actual innocence. The court denied the COA stating,

"Stevenson argues actual innocence by asserting that the trial court allegedly lacked jurisdiction over him, and its judgment was therefore void. He asserts that this is more than a mere 'legal insufficiency' because it affected his constitutional rights, and he presents documents that he claims show that the juvenile court did not waive its jurisdiction over him. But even if Stevenson is correct that the juvenile court did not waive its jurisdiction, this does not implicate whether or not he factually committed the crime, and thus 'not the sort of claim contemplated by the 'actual innocence' exception as justifying equitable tolling.' *Casey v. Tennessee*, 309 F. App'x 47, 48-49(6th Cir. 2010). Reasonable jurists could not debate the district court's rejection of this argument."

Petitioner now brings this question before this court to determine if new evidence restoring the presumption of innocence can equitably toll the statute of limitations of § 2244 under the miscarriage of justice exception.

REASONS FOR GRANTING THE PETITION

United States Supreme Court Rule 10(c),

"(c) a state court or 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."

ARGUMENT

I. WHERE PETITIONER IS PRESUMED GUILTY PURSUANT TO A STATE COURT JUDGMENT ACTUAL INNOCENCE CAN BE PROVEN BY PRESENTING NEWLY DISCOVERED EVIDENCE THAT THE STATE COURT JUDGMENT WAS VOID AND THE PRESUMPTION OF INNOCENCE HAS BEEN RESTORED.

Petitioner Stevenson was convicted in the State trial court on January 11, 1993, and sentenced on January 26, 1993. On January 8, 2015, Petitioner Stevenson received a package of mail from the office of the Wayne County Clerk in Michigan. The mail consisted on the Referee R & R and JC63 Order Terminating the Parental Rights of Petitioner's parents filed May 8, 1991; the JC19 Supplemental Order of Disposition in which the court's jurisdiction was terminated filed May 14, 1993; and a copy of the Register of Action(event Screen 336) and Juvenile Case Inquiry(Event Screen 900-Official); along with a signed letter from the Juvenile Court Services Department Administrator Candace L. Jenkins(all of which is attached herein titled New Evidence at Appendix F). The content of this package contained new evidence to the fact that the trial court had not obtained personal jurisdiction over Petitioner Stevenson to charge him as an adult where he was still under the exclusive jurisdiction of the juvenile court division, specifically the court order signed by the judge terminating jurisdiction on May 14, 1993. This new evidence did not exist during Stevenson's trial because he was convicted and sentenced in January of 1993, which was four months before this new court order was

signed. This court order was extrinsic proof that the court charged and entered a judgment against Stevenson without obtaining personal jurisdiction, making the proceedings and judgment of the trial court void ab initio, and therefore restores Petitioner Stevenson's presumption of innocence. The presumption of innocence is in fact a presumption of law and is evidence in favor of the accused where in all systems of law legal presumptions are treated as evidence. Various opinions of this Honorable Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. The argument presented by Petitioner Stevenson here is that where there is existing evidence that proves the state court had no personal jurisdiction to charge him and the proceedings become absolutely void then there results no trier of facts to weigh in on the question of is he guilty beyond a reasonable doubt. The line between guilt and innocence is drawn with reference to reasonable doubt and a petitioner should be able to show actual innocence with proof that his presumption of innocence has been restored because the state court's conviction is absolutely void. In light of the new evidence presented by Petitioner Stevenson no juror should have had the opportunity to vote on rather or not he was guilty beyond a reasonable doubt because the state court did not possess personal jurisdiction over him. To require a habeas petitioner to present evidence that he did not actually commit the offense he stands convicted of in a case where the state court had no jurisdiction to convict him places an unjust burden on the petitioner after a clear violation of his due process guarantees. Therefore a habeas petitioner claiming a miscarriage of justice exception should be able to show actual innocence with new evidence which restores his presumption of innocence, and the Sixth Circuit United States court of appeals has decided this important question of federal law in a way that conflicts with relevant decisions of this Court.

RELEVANT DECISION OF THE COURT

Coffin v. United States, 156 U.S. 432, (1894)

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." id at 453

"The presumption of innocence is a conclusion drawn by the law in favor of the citizen, by virtue whereof, when brought to trial upon a criminal charge, he must be acquitted, unless he is proven to be guilty. In other words, this presumption is an instrument of proof created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created." id at 458-59

"Greenleaf thus states the doctrine: '[a]l men do generally violate the penal code, the law presumes every man innocent; but some men do transgress it, and therefore evidence is received to repel this presumption. This legal presumption of innocence is to be regarded by the jury, in every case, as matter of evidence, to the benefit of which the party is entitled.'" id at 459(quoting 1 Greenl. Ev. § 34)

"The fact that the presumption of innocence is recognized as a presumption of law and is characterized by the civilians as a *presumptio juris*, demonstrates that it is evidence in favor of the accused. For in all systems of law legal presumptions are treated as evidence giving rise to resulting proof to the full extent of their legal efficacy." id at 460

Estelle v. Williams, 425 U.S. 501(1976)

"In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt" id at 503

In re Winship, 397 U.S. 358(1970)

"Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required." id at 362

"As the dissenters in the New York Court of Appeals observed, and we agree, 'a person accused of a crime. . . would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.'" id at 363(citation omitted)

"It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost

certainty." id. at 364

"Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." id. at 364

Herrera v. Collins, 506 U.S. 390(1993)

"Once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears. Cf *Ross v. Moffitt*, 417 US 600, 610, 41 L. Ed 2d 341, 94 S Ct 2437(1974) ('The purpose of the trial stage from the State's point of view is to convert a criminal defendant from a person presumed innocent to one found guilty beyond a reasonable doubt'). Here, it is not disputed that the State met its burden of proving at trial that petitioner was guilty of the capital murder of Officer Carrizalez beyond a reasonable doubt. Thus, in the eyes of the law, petitioner does not come before the Court as one who is 'innocent,' but, on the contrary, as one who has been convicted by due process of law of two brutal murders." id. at 399-400

"In a series of cases culminating with *Sawyer v. Whitley*, 505 US 333, 120 L. Ed 2d 269, 112 S Ct 2514(1992), decided last term, we have held that a petitioner otherwise subject to defense of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence. This rule, or fundamental miscarriage of justice exception, is grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons. But this body of our habeas jurisprudence makes clear that a claim of 'actual innocence' is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." id. at 404

Schulp v. Daho, 513 U.S. 298(1995)

"Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred claim. However, if a petitioner such as Schlup presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error, the petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims.

Consequently, Schlup's evidence of innocence need carry less of a burden. In *Herrera*(on the assumption that petitioner's claim was, in principle, legally well founded), the evidence of innocence would have had to be strong enough to make his execution 'constitutionally intolerable' even if his conviction was the product of a fair trial. For Schlup, the evidence must establish sufficient doubt about his to justify the conclusion that his execution would be a miscarriage of justice unless his conviction was the product of a fair trial." id. at 316

"To ensure that the fundamental miscarriage of justice exception would remain

'rare' and would only be applied in the 'extraordinary case,' while at the same time ensuring that the exception would extend relief to those who were truly deserving, this Court explicitly tied the miscarriage of justice exception to the petitioner's innocence. In Kuhlman, for example, Justice Powell concluded that a prisoner retains an overriding 'interest in obtaining his release from custody if he is innocent of the charge for which he was incarcerated. That interest does not extend, however, to prisoners whose guilt is conceded or plain.'" id. at 321(referring to *Kuhlman v. Wilson* 477 US 436, 452, 91 U. Ed. 2d 364, 106 S Ct 2616)

"In addition to linking miscarriage of justice to innocence, Carrier and Kuhlman also expressed the standard of proof that should govern consideration of those claims. In Carrier, for example, the Court stated that the petitioner must show that the constitutional error 'probably' resulted in the conviction of one who was actually innocent. The Kuhlman plurality, though using the term 'colorable claim of factual innocence,' elaborated that the petitioner would be required to establish, by a 'fair probability,' that 'the trier of facts would have entertained a reasonable doubt of his guilt.'" id. at 322(citations omitted)(referring to *Murray v. Carrier*, 477 U.S. 478, 91 U. Ed. 2d 397, 106 S Ct 2639)

"[T]he fundamental miscarriage of justice exception seeks to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case. We concluded that Carrier, rather than Sawyer, properly strikes that balance when the claimed injustice is that constitutional error has resulted in the conviction of one who is actually innocent of the crime." id. at 324

"[E]xperience has taught us that a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare. To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence -- whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence -- that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful." id. at 324

"The quintessential miscarriage of justice is the execution of a person who is entirely innocent. Indeed, concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected, for example, in the 'fundamental value determination of our society that is is far worse to convict an innocent man than to let a guilty man go free.'" id. at 324-25(quoting *In re Winship*, 397 at 372)

"The consideration in federal habeas proceedings of a broader array of evidence does not modify the essential meaning of 'innocence.' The Carrier standard reflects the proposition, firmly established in our legal system, that the line between innocence and guilt is drawn with reference to a reasonable doubt." id. at 329

"Thus, whether a court is assessing eligibility for the death penalty under Sawyer, or is deciding whether a petitioner has made the requisite showing of innocence under Carrier, the analysis must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between guilt and innocence. The meaning of actual innocence as formulated by Sawyer and Carrier does not merely require a showing that a reasonable doubt exists in the light of the new evidence, but rather

that no reasonable juror would have found the defendant guilty. It is not the district court's independent judgment as to a probabilistic determination about what reasonable, properly instructed jurors would do. Thus, a petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.

We note finally that the Carrier standard requires a petitioner to show that it is more likely than not that 'no reasonable juror' would have convicted him. The word 'reasonable' in that formulation is not without meaning. It must also be presumed that such a juror would conscientiously obey the instructions of the trial court requiring proof beyond a reasonable doubt." id. at 328-29

Black's Law Dictionary

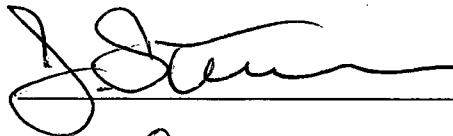
Presumption of innocence. Criminal law. The fundamental principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence.

Presumption. 2. A legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9-24-19