

ORIGINAL

IN THE UNITED STATE SUPREME COURT

LAMAR LOVETT,  
Petitioner

FILED  
JAN 07 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Vs.

Case No. 19-6257

LORI DAVIS,  
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI FROM THE  
UNITED STATES 5th CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING

Reindictment Cause No. D-1-DC-10-904094

Conviction Date: 12-10-10.

Original Indictment Cause No. D-1-DC- 10-202992

Dismissed March 6th 2011 Ruled Double Jeopardy

April 15th 2015.

Original Indictment Aggravated Assault 2 Counts Cause No. D-1-DC-10  
202993 Dismissed on 1-6-2011.

Solicitation to commit Capitol Murder Cause No. D-1-DC-10-301992

Dismissed on 8-24-2011.

NO JURISTICTION

Signed on \_\_\_\_\_ this day of \_\_\_\_\_, 2020

Lamar Lovett # 01687455  
James V. Allred Unit  
2101 F.M. 369 N.  
Iowa Park, Texas 76367

PETITION FOR REHEARING AND MEMORANDUM IN SUPPORT

Comes now, the Petitioner, Lamar Lovett #1687455, Pro Se, and Prays this Court Grant him a Writ of Certiorari.

Review or Rehearing Pursuant to Rule 44 and thereafter grant him a Writ of Certiorari to review the Opinion of the 5th Circuit Court of Appeals in support of the Petition Mr. Lovett states the following:

STATEMENT OF FACTS

On December 12, 2010, Petitioner was convicted of Attempted Capitol Murder, 2 Counts of aggravated Sexual Assault and Aggravated Assault in Cause No. D-1-DC-10-904099, this is a Reindictment from the original indictment that was dismissed after the conviction as follows Aggravated Assault in Cause No. D-1-DC-10-202992 that was also Dismissed but before the Double Jeopardy Ruling in 2015 or March 2011.

2 Counts of Aggravated Sexual Assault in Cause No. D-1-DC-10-202993, were also Dismissed on January 06, 2011, and a Solicitation to committ Capitol Murder in Cause No. D-1-DC-10-202993 this was also dismissed on August 24, 2011, there is no Jurisdiction for the Reindictment period, it is void by law.

There also was no competency hearing for a mentally ill person.

REASONS FOR MERITING FOR REHEARING

1. The 5th Circuit resonings are in Confict with the 5th Amendment Right to an indictment by a Grand Jury in a capitol charge and in **Strickland v. Washington**, 466 U.S. 668 (1984) and **Williams v. Taylor**, 529 U.S. 362. emphasizing that in determining the Strickland prejudice, the Court must examine both the trial testimony and the Post-Conviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probability of a

diffrent outcome.

In that the 5th Circuit merely examined the opinions of the Texas Court of Criminal Appeals which stated in the light most favorable to the jurys verdict and all contrary evidence ignored like the petitioner is also mentally ill along with the victim Ms. Schwarts.

2. The case is in direct conflict with *Stanley v. Bentley*, 465 F.3d 810 (7th Cir. 2006), which case is also strikingly similar both legaly and factually. The same results reached in stanley must be reached in this case.

This Court must grant a rehearing and issue the Writ of certorari, because to failure to do so would allow the 5th Circuit to continue to apply the wrong standerd in deciding the prejudice prong of ineffective assistance of counsel claims and deny justice to those it is entitled to.

3. This Court also has an ethical duty to the United States Constitution to establish law of the land to assure the citizens of the United States of Amarica that the lower courts apply the law equally.

When they do not it is this Courts obligation to hold that Court accountable, and see to it that justice is administered fairly, this Court must also hear this case and hold the 5th Circuit accountable for failing to appy the law of this court and grant relief where relief is do.

#### SUGGESTIONS IN SUPPORT OF REHEARING

The Texas Court of Criminal Appeals decision that lovett could not overcome it's mental illness and that trial counsel did not bring up defendants mental illness during trial resulted in both an unreasonable determination of the facts of the evidence presented.

An unreasonable application of **Strickland v. Washington** because trial counsel did not bring up the defendants mental illness during the trial nor did the State, was unreasonable and Lovett's evidence on his mental illness were not gone in to by Lovett's Counsel or the State.

To meet the first prong of **Strickland**)as in **Anderson v. Johnson**, 338 F.3d 392 (5th Cir. 2003) [T]here is no evidence that counsel decisions to forego investigations was an unreasonable at all, See **Anderson v. Johnson**, 338 F.3d 392 (5th Cir. 2003) Failure to present this evidence is not a calculated trial strategy but it is likely the results of indolence or incompetence as the court put in **Bryant v. Scott**, 28 F.3d 1411, 1415 (5th Cir. 1994) an attorney must engage in a reasonable amount of pretrial investigations and at a minimal interview potential witnesses and make an independant investigation was not part of the trial strategy, Quoting **Nealy v. Cabana**, 764 F.2d 1173, 1177 (5th Cir. 1985), under the circumstances here the State had the Burden to show a stragegy to support Petitioners mental illness claim, clearly met the performance prong of **Strickland v. Washington**, 466 U.S. 668, 687-88 (1984), the question for the Court to answer is whether Lovett's was prejudized by counsels and the States ineffectiveness to protect Lovett's mental illness.

The State did not present evidence of Petitioner's mental illness nor did the petitioner's Counsel, this concusion is like wise an unreasonable interpretation of **Strickland** its pragney **Williams v. (terry) Taylor**, 529 U.S. 362 (2000) emphasizes that determining the **Strickland** prejudice the Court must examine both trial testimony and the Post-Conviction evidence that has been presented if there is a reasonable probability of a different outcome.

to the extent that inferior Federal Courts have decided factually

similar cases reference it those decisions in appropriate in assessing the reasonableness of the State Courts treatment of the consented issue **Copland v. Washington**, 237 F.3d 969, 974 (5th Cir. 2000) Lovett refers to this Court to **Stanley v. Bartley**, 465 F.3d 810 (7th Cir 2006) as was the case in **Stanley** the issue is not whether Lovett is innocent but whether he had a competent lawyer, he would have had a reasonable chance if it needed to be a 50 percent of greater chance. See **Miller v. Anderson**, 255 F.3d 455, 459 (7th Cir. 2001).

Of being given that guilt must be proven beyond a reasonable doubt guilty people are often acquitted, guilt must be proven beyond a reasonable doubt.

In the evidentiary hearing the minutes of the 11.07 (3)(d) States petitioner hands were never proven to be weapons. The Victims statements are not credible, the jailhouse informant is not credible.

And a solicitation to commit capitol murder charge was used to convict with hand evidence. Then dismissed all of these are reversible error and backed up in the reindicted conviction.

I also have been moved from unit to unit being taken away from my legal material, I have no note-books or case laws at my current disposal, also without the evidence that has been dismissed no jury could find petitioner guilty of cause No. D-1-DC-10-909094, because everything has been dismissed and would have been inadmissible.

#### CONCLUSION

For the reasons stated this Court must grant a rehearing of its judgement entered on the 16th of December 2019 and issue a Writ of certiorari, to hold the 5th Circuit accountable for failing to apply the law properly. This Court and grant Mr. Lovett relief should Mr. Lovett cry for justice and not be heard and denied relief. May this

Court also cry and not be heard.

For whosoever shuts their ears to the cry of the poor will cry themselves and not be heard Proverbs 21:13.

CERTIFICATE OF SERVICE

The Undersigned hereby certifies that a true and correct copy and of the Postage prepaid this day \_\_\_\_\_ of \_\_\_\_\_ 2020 to Lori Davis and Ron Paxton Attorney General at P.O. Box 12548 Austin Texas 78711.

Respectfully Submitted

on this \_\_\_\_\_ day of \_\_\_\_\_, 2020

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