19-7639

No._____

IN THE

SUPREME COURT FOR THE UNITED STATES

GREGORY FRANKLIN HARRIS,-Petitioner,

V.

WILLIS CHAPMAN, WARDEN,-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GREGORY FRANKLIN HARRIS

MACOMB CORRECTIONAL FACILITY

34625 26 Mile Road

Lenox Township, MI 48048

QUESTION(S) PRESENTED

I. WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO FILE A MOTION TO SUPPRESS EVIDENCE OBTAINED FROM HARRIS'S HOTEL ROOM?

II. WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO CONDUCT A PROPER PRETRIAL INVESTIGATION AND TO CHALLENGE THE FALSE EVIDENCE USED TO BIND HARRIS OVER FOR TRIAL?

III. WAS TRIAL COUNSEL INEFFECTIVE FOR ALLOWING A RETIRED POLICE DETECTIVE TO SERVE AS A JUROR DESPITE HARRIS'S DISAGREEMENT?

IV. WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO CHALLENGE A POTENTIAL JUROR'S STATEMENT THAT SHE DID NOT THINK SHE COULD BE IMPARTIAL?

V. WAS TRIAL COUNSEL INEFFECTIVE WHEN HE VIOLATED PETITIONER'S RIGHT TO RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL BY ALLOWING THE WITNESS CLEVELAND HURD TO LIE UNDER OATH DURING CROSS-EXAMINATION?

LIST OF PARTIES

[X] 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:

Ms Laura Graves Moody, office of Attorney General of Michigan, potter St., P.O. Box 30217 Lansing, MI 48116

RELATED CASES

- People V. Harris No# 11-00-1914-01-FC Third Circuit Court of Wayne County Judgment entered April 25, 2014.
- People V. Harris No# 323554 Court of Appeals for Michigan Judgment entered March 12, 2015.
- People V. Harris No# 146559 Michigan Supreme Court Judgment entered under People V. Harris 872 N.W. 2d 452 (Mich. 2015)(unpublished table decision)
- People V. Harris No# 15-14448-BC Judgment entered March 22, 2019
- People V. Harris No# 19-1423 Judgment entered 09/04/2019

(1) On order of the court, the application for leave to appeal the December 13, 2012 Judgment of the Court of Appeals is considered, and it is denied, because we are nor persuaded that the questions presented should be reviewed by this court. PEOPLE V. HARRIS 2013 Mich. Lexis 645 No# 146559; 493 Mich. 970; 829 NW 2d 204; 2013 WL 1809450

(2) # No. 306497 PEOPLE V. HARRIS 498 Mich. 949; 872 NW 2d 452; 2015 Mich. Lexis 2862 (Dec. 22, 2015)

Writ of Habeas Corpus dismissed, Certificate of Appealability denied, motion denied by HARRIS V. WARREN 2019 U.S. Dist. Lexis 47804 (E.D. Mich. Mar. 22, 2019

(3) Michigan Court of Appeals * Unpublished Opinion

HARRIS, 2012 WL 6217196 at * 3

no access provided for rsaarching West Law cites in the prison library at Macomb Correctional Facility.

UNPUBLISHED CASES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR THE 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___ to the petition and is

[] reported at Harris, 2012 WL 6217196 at *3;

[X] is unpublished.

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

[X] reported at (4/25/2014 Wayne Cir. Ct. order at. 1-13);

[] For cases from the state courts:

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

[] reported at 829 NW 2d 452 (Mich. 2015) court appears at Appendix ___ to the petition and is

[X] is unpublished.

STATEMENT OF THE CASE

1st Ineffective assistance of counsel by the defense counsel failing to investigate tainted Petitioner's entire trial. This allowed the prosecutor to strengthen his case by using the evidence obtained as a result of a warrantless search of Petitioner's hotel room. U.S.C.A. Const., Amend. IV NORDONE V. UNITED STATES 308 US 338, 341; 60 S. Ct. 266, 268; L. Ed 307 Id at.

2nd This, taint allowed the prosecutor to use false evidence during the Petitioner's bind over trial, and this allowed the, prosecutor to use the crime scene investigator's false testimony during trial. DEVERAUX V. ABBEY 263 F.3d 1070, 1074-75 (9th Cir. 2001). Id at.

3rd) against Petitioner's disagreement the defense counsel refused to strike the retired police investigator during voir-dire, even after Mr. Bradley stated he was acquainted with the prosecutor, the judge and was friends with one of the police officers that was a witness for the prosecutor. With knowledge of the court rules and procedures, Mr. Bradley had the ability to pool the jury. (bias juror) TURNER V. LOUISIANA 379 U.S. 466 (1965); IRVIN V. DOWD 366 US 717, 727 (1961) (internal citations omitted). WILLIAMS V. BAGLEY 380 F.3d 932, 944 (6th Cir. 2004) citing MORGAN V. ILLINOIS 504 US 719, 729 (1992) Id at.

4th) The defense counsel was ineffective by failing to challenge juror during voir dire even after she omitted being bias from the conversation that she heard during her break. This juror expressed her reason for being bias to the Judge. Counsel didn't request a taint hearing nor did he take any precautions to ensure the juror wasn't placed as a juror, a clear VI AND XIV violation of Petitioner's constitutional rights. TURNER V. LOUISIANA 379 US 466 (1965); IRVIN V. DOWD 366 US 717, 727 (1961)(internal citations omitted) WILLIAMS V. BAGLEY 380 F.3d 932,

944 (6th Cir. 2004) citing MORGAN V. ILLINOIS 504 US 719, 729 (1992) Id at.

5th) The defense counsel and the prosecutor couch their witness to lie during trial; the defense counsel first made a witness out of someone that was originaly on the prosecutor's witness list, helped the witness Mr. Hurd change his original statement, and after talking it over with the prosecutor tried to get Mr. Hurd classified as a rebuttal witness in order for the witness to enter the lie before the jury. STRICKLAND V. WASHINGTON 466 US 668, 687 (1984). BRADY V. MARYLAND 373 US 83, 87 (1963); WIGMORE EVIDENCE RULE MRE 103 (a)(2); THE WIGMORE EVIDENCE (TILLERS-REV.)-§ 15, P. 733 N.3. A clear violation of Petitioner's VI AND XIV due process rights under the United States Constitution, and Michigan Const., 1963 Art. 1 Sec. 17, and 20. Id at.

STATEMENT OF THE CASE

Petitioner, GREGORY FRANKLIN HARRIS, Herein stated as Petitioner, was convicted by a jury for Second-Degree Murder on July 28, 2011. The murder charged stemmed from the death of Petitioner's girlfriend. On August 17, 2011, Petitioner was sentenced to 270 months to 500 months. Appointed appellate counsel, Neil J. Leithauser filed a direct appeal on Petitioner's behalf, which was denied by the Michigan Court of Appeals on December 13, 2012. Petitioner then filed a subsequent Pro Per appeal to the Michigan Supreme Court which was denied on April 29, 2013. Petitioner filed a Motion for Relief from Judgment pursuant to MCR 6.500 in the Wayne County Circuit Court which they denied on April 25, 2014. Petitioner then appealed the order of the Wayne County Circuit Court to the United States District Court of Michigan Case No. 15-144448.

THE FACTS ARE

There was no evidence that Petitioner inflicted any fatal injuries on a Ms. Craig. Dr. Somerset, who was the medical examiner testified that in his conclusory finding that the cause of death was a homicide by blunt force trauma to the head (TS. vol 1 p.132). Dr. Somerset indicated the only injuries he found, were two fractures to the madible (Id. at 131). Importantly, Dr. Somerset admitted that his findings of homicide had nothing to do with the injuries, and based on no medical findings at all, but the fact on the victim was taken to the hospital and was wrapped in plasticbags.

Dr. Somerset also testified that the fractures were survivable and typically non-fatal.(Id. at 135-136).

Dr. Somerset also testified that ths mandible fractures could have occurred if the deceased had been running, and was pushed or fell, hitting her jaw on a hard surface (id. at 141-143). there was no other apparent injuries (Id. at 135).

"it should be noted this was the prosecutor's ster witness."

The medical examiner who ruled the manner of death a homicide, stated in this case that he would have otherwise ruled it accidental (TS. 7-27-2011 p. 135);determined that blunt force trauma was the cause of death, even though there was no evidence to support his claim other that a mandible fracture which

he stated very clearly was typically non-fatal (Id. at 136).

In short, we don't know with a medical certainty what caused her death. "Was it opiates?" Perhaps. Dr. Somerset concluded wasn't based on the typical non-fatal injuries, but rather, on the fact that Petitioner did not call the EMS and instead wrapped and kept Ms. Craig's body in the apartment after her death. As Dr. Somerset explained, "...I chose homicide, I ruled her a homicide because how she was found, that she wasn't taken to the hospital, the EMS wasn't called, and that she was meticulously wrapped and started decomposing. So based on that, I ruled it a homicide" (Id. at 133).

In short Petitioner was convicted on speculation, and ability to detached himself from his girlfriend after her death.

STATEMENT OF THE CASE

The district court, for the purpose of judicial economy, addressed the merits of all of the Petitioner's claims without considering procedural default. See HUDSON V. JONES 351 F.3d 212, 215 (6th Cir. 2003) After review, the Court determined the Petitioner's claims lack any merit. The district court therefore denied the Petitioner's petition and denied his COA. The Petitioner obtained his G.E.D., in prison in the year of 1997 and that did not provide the Petitioner with the skills of being able to litigate in proper form or text before or in our Honorable Courts. Therefore Petitioner lacks the education, knowledge, and skill to form his arguments in proper form and in the context of a 6.500 motion to our Honorable Courts. It was not intentional, and therefore Petitioner is requesting this United States Supreme Court to utilize their judicial discretionary powers and reverse the lower courts decision to apply their sovereign powers in denying Petitioner's petition under the BURT V. TITLOW 134 S. Ct. 10, 15-16 (2013); 28 U.S.C. § 2254 (d) because congress has limited the availability of Federal Habeas Corpus Relief "with respect to any claim" the state courts "adjudicate on the merits." 28 U.S.C. § 2254 (d) unless the state courts arrives at a conclusion opposite to that reached by [The Supreme Court] on a question of law or if the State Court decides on a question of law or if the State Court decides a case differently than [The Supreme Court] has on a set of materially indistinguishable facts. METRISH V. LANCASTER 133 S. Ct. 1781, 1786 N. 2 (2013) (internal quotation marks and citations omitted). Id. at pg. 10-11 of standard of Review pursuant to AEDPA.

REASON FOR GRANTING PETITION

Under § 2254(d)(2), the "Unreasonable Determination" Clause a state court's factual determination is not unreasonable merely because the federal court would have reached a different conclusion in the first instance. TILTOW 134 S. Ct. at 15 (internal quotation marks and citation omitted). "Under AEDPA, if the state-court decision was reasonable, it cannot be disturbed." (Id at pg. 4 at. 16#) * RICHTER 562 US at 102. This standard protects against intrusion of federal habeas review upon "both the states' sovereign power to punish offenders and their goodfaith attempts to honor Constitutional rights." Id. at 103 (internal quotation marks and citation omitted). Id. at pg. 5 # at 4-9, to clear the 2254 (d) hurdle, a habeas petitioner "must show that the state courts ruling on the claim being presented in federal court was so lacking in justification that there was error well understood and comprehended in existing law beyond any possibility for fair minded disagreement." Id at. 103. "If this standard is to difficult to meet that's because it was meant to be." Id at. 102. Under these very high standards of review a petitioner filing a federal habeas will never meet the threshold proving a state courts decision being unreasonable and by chance petitioner meets the burden of proof that the state court decision was unreasonable under the standard of (A.E.D.P.A.)WETZEL V. LAMBERT 132 S.Ct.1195,1199 (2012).

And because a state courts factual determinations are presumed correct on a federal habeas review and under the standards of (A,E,D,P.A.) WETZEL V. LAMBERT, 132 S. Ct. 1195, 1199 (2012). Petitioner is humbly requesting the UNITED STATES SUPREME COURT to use their judicial discretionary powers and overturn the appeal courts decision in denying his filing on COA. And remand back to trial court to be resentenced without the challenged evidence. Id at KIMMELMAN V. MORRISON at 106 S. Ct. 2575; 15# Habeas Corpus Key. 25.1.(6) U.S.C.A. Const. Amends. 4,6.

REASON FOR GRANTING PETITION CONTINUING
Case # 19-1423

The district court for the purpose of judicial economy addressed the merits of all of Petitioner's claims without considering the procedural default See HUDSON V. JONES 351 F3d 212, 215 (6th Cir. 2003), and determined Petitioner's claims lack merit, and therefore denied Petitioner's petition and denied COA.

The Petitioner humbly request that this Highest of our Honorable Courts to utilize their discretionary jurisdiction on reversing the erroneous decision made by the Court of Appeals by denying Petitioner's petition and his COA. The honorable Court of Appeals said Petitioner's claim on ineffective assistance of counsel, failing to file a motion to suppress evidence obtained from the warrantless search of Petitioner's room lacks merit and therefore was denied. (id at pg. 5 at 2-13-of #19-1423 in App.) The prosecution stated "any motion to suppress would have been futile," BECAUSE of the missing persons report filed and because Petitioner admitted to wrapping her body in plastic and placing her under Petitioner's bed.

The missing person's report didn't informed the offices of her whereabouts. Petitioner's brother called Sgt. Howell after seeing the missing persons report at which time he informed the sergeant of the conversation of Petitioner "telling" his brother that her body was in his hotel room under his bed. Sgt. Howell (Id at TT. day 1 pg. 88), admitted after having that conversation with Petitioner's brother, that he then called and ordered his special ops. officers to go to Petitioner's hotel room and conduct the warrantless search of his room, and call it a well being check. the officer obtained the key from the front desk "BEFORE he unlocked the door, he NOTICE a towel underneath the door and the ODOR of death." Then he looked under he bed and found the body. After the warrantless search of Petitioner's room the officers left his room and called Sgt.

Howell back at the investigations office and Sgt. Howell then instructed his special ops. officers to call the homicide office and they obtained the search warrant. They entered the room and recovered the body and the evidence. (Id at pg. 5 of 19-1423; of the courts response in App. pg.). Because "the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate AID." MINCEY V. ARIZONA 437 US 385, 392 (1978). This search was organized for the sole purpose of verifying the information that Petitioner shared with his brother who then shared it with Sgt. Howell as being true. This illegal search was conducted for the sole purpose of making an arrest. These polics officers while operating under the colors of official sanctions knowingly chose to violate Petitioner's due process rights.

KIMMELMAN V. MORRISON at 106 S. Ct. 2575 #15 Habeas Corpus Key. 25.1 (6)

Although a meritorious Fourth Amendment issue is necessary to succeed of Sixth Amendments ineffective assistance of counsel claim based on incompetent representation with respect to forth amendment issues a good Fourth Amendment claim alone will not earn a prisoner Federal hebeas Relief; only those habeas petitioners who can prove that they have been denied a fair trial by gross incompetence of their attorneys will be granted the writ and will be entitled to retrial without the challenged evidence. U.S.C.A. Const., Amend. 4,6.

Evidence obtained was from a direct result of the illegal search and was "fruit of the poisonous tree," this rule extends as well to the indirect as to the direct products of the unconstitutional conduct. U.S.C.A. Const. Amend. 4th. NORDONE V. UNITED STATES 308, 341; 60 S. Ct. 226, 268; 84 L.Ed. 307.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory Franklin Harris

Date: Feburary, 04 /2020