

No. ILSC 125304

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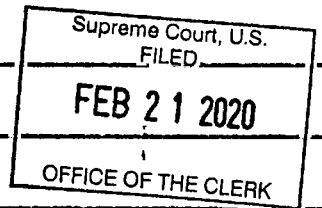
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Brandon Banks, petitioner,

V.S.

Illinois, Respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO
the SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

Brandon Lavar Banks

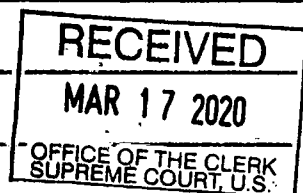
Reg. No. Y18127

Menard Correctional Center

P.O. Box 1000

Menard, Illinois 62259

(618) 826-5071



QUESTIONS PRESENTED FOR REVIEW

• Was Petitioner denied Due Process of law, a fair trial by an impartial jury and/or equal protection of the law when his Appellate Counsel's performance fell below an objective standard of reasonableness in violation of Petitioner's right to counsel as guaranteed by the 6th and 14th amendment to the U.S. Constitution?

• Was Petitioner denied Due Process of law, a fair trial by an impartial jury and/or equal protection of the law when his [REDACTED] Trial counsel's performance fell below an objective standard of reasonableness in violation of petitioner's right to counsel as guaranteed by the 6th and 14th amendments to the U.S. Constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury and/or Equal protection of the law in opposition to his rights under the 14th amendment to the U.S. Constitution?

• Was petitioner denied due process of law, a fair trial by an impartial jury, and/or equal protection of the law when Police interrogators deliberately elicited incriminating statements from the petitioner against his will in violation of petitioner's right to right to remain silent, right to counsel, and/or Due Process of law, Equal protection of law as guaranteed by the 5th, 6th, and 14th Amendment?

• Was petitioner denied Due Process of law, Equal Protection of law, and/or a fair trial by an impartial jury when deliberately elicited incriminating statements was erroneously admitted at trial in violation of petitioners 5th, 6th, and 14th amendment rights under the U.S. Constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury, and/or Equal Protection of the law when the trial court applied rules of evidence arbitrarily against the petitioner in opposition to the 5th, 6th, and 14th amendments to the U.S. Constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury, and/or equal protection of law when petitioner's sentence and verdict were based on findings by the trial court rather than by the jury in opposition to constitutional safeguards established by the 5th, 6th, and 14th amendments to the U.S. Constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury, and/or Equal Protection of the law when potential juror bias was not exposed due to unconstitutional limitations applied by the trial court, furthermore the court erroneously refused to excuse jurors "FOR CAUSE", both on Voir Dire in opposition to petitioners rights as guaranteed by the 5th, 6th, and 14th amendments to the United States Constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury, and/or Equal Protection of the law when the trial court erroneously denied his right to counsel of petitioners choice in violation of petitioners right to counsel as guaranteed by the 6th and 14th amendments to the U.S. constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury, and/or Equal Protection of the law as a result of prosecutorial misconduct imposed prejudice, including the known use of perjured testimony, variance, and the prejudicial use of prior crimes evidence, among other examples, all used in opposition to the 5th, 6th and 14th amendments to the U.S. Constitution?

• Was petitioner denied Due Process of law, a fair trial by an impartial jury, and/or equal protection of the law by the combined effect of individually harmless errors which, in combination, render the defense far less persuasive than it otherwise would have been had these combined, cumulative errors not violated the 5th and 14th amendment to the U.S. Constitution's due process clauses?

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2019

Brandon Lavar Banks,
Petitioner

-VS-
People of the state of Illinois,
Respondent

INTRODUCTION

TO THE CHIEF JUSTICE OF THE UNITED STATES AND TO
THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES:

May It Please The Court:

I, Brandon Lavar Banks, respectfully pray that a writ
of certiorari issue to review the decision of the Appellate
Court of Illinois, Fifth Judicial District.

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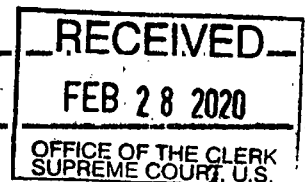


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- Turner v. Murray, 476 U.S. 28 (1986)
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- Gray v. Netherland, 516 U.S. 152 (1996)
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- Darden v. Wainwright, 477 U.S. 168 (1986)
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- U.S. v. Gonzalez-Lopez, 126 S.Ct. 2557 (2006)
- Brown v. Ohio, 432 U.S. 161 (1977)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- U.S. v. Gaudin, 515 U.S. 506 (1995)
- In re Winship, 397 U.S. 358 (1970)
- Blakely v. Washington, 542 U.S. 296 (2004)
- Benton v. Maryland, 395 U.S. 784 (1969)

REFERENCE TO THE OPINION

The Order of the Appellate Court of Illinois, Fifth Judicial District, which was not published pursuant to Illinois Supreme Court RULE 23, is included herein in Appendix A. The Order of the Illinois Supreme Court denying the petitioners request for review is attached hereto as Appendix B.

JURISDICTION

The decision of the Appellate Court of Illinois, Fifth Judicial District, was filed on March 27, 2019, and on May 6, 2019, the clerk of that court entered this decision pursuant to the Mandate. This petition is timely filed within 90 days of the denial of the petitioners request for review by the Illinois Supreme Court. The Supreme Court denied review on Nov 26, 2019, and the mandate of the Supreme Court was entered to the Appellate Court on December 31, 2019. This courts jurisdiction is invoked under 28 U.S.C. section 1257(3).

Constitutional Provisions Involved

- Petitioners Appellate Counsel was ineffective in violation of U.S.C. 14th and 6th amendment provisions regarding right to counsel, due process of law, and equal protection of law.

- Petitioners Trial Counsel was ineffective in violation of U.S.C. 14th and 6th amendment provisions regarding right to counsel, due process of law, and equal protection of law.

- Evidence used to convict petitioner was obtained in violation of U.S.C. 14th, 5th, and 6th amendment provisions regarding Due Process of law, Equal protection of law, right to counsel, and the privilege against constitutionally protected speech.

- Incriminating statements were obtained from petitioner without a valid waiver of his right to remain silent in violation of U.S.C. 14th, 5th, and 6th amendment provisions regarding Due Process of law, Equal protection of law, Right to counsel, and the privilege against constitutionally protected speech.

- Incriminating statements were obtained from petitioner without a valid waiver of his right to counsel in violation of U.S.C. 14th, 5th, and 6th amendment provisions regarding Due Process, Equal protection, Right to counsel, and protected speech.

• Petitioner was convicted on the basis of deliberately elicited statements that were erroneously admitted in violation of U.S.C. 14th, 5th, and 6th amendment provisions regarding Due process, Equal protection, a fair and impartial trial, Right to counsel, and constitutionally protected speech.

• Petitioner's conviction was obtained as the result of a police interrogation conducted in violation of U.S.C. 14th, 5th, and 6th amendment provisions regarding Due Process, Equal Protection, Right to counsel, a fair trial by an impartial jury, and constitutionally protected speech.

• Information used to convict the petitioner was obtained as the result of coercive interrogation of the petitioner after the invocation of the right to counsel, violating 14th, 5th, and 6th amendment provisions regarding Due Process, Equal Protection, Right to counsel, a fair trial by an impartial jury, and constitutionally protected speech.

• Rules of Evidence were applied routinely in a way which denied petitioner the right to present a complete defense resulting in cumulative error where the combined effect of all these errors deprived petitioner Due Process and ultimately render the defense far less persuasive than it otherwise would have been.

The actions are violations of 14th, 5th, and 6th amendments to the U.S.C.

• The trial court improperly refused to excuse a juror for cause and further errs when potential juror bias was not exposed because unconstitutional limitations by the court on Voir Dire, actions violating the 14th, 5th, and 6th amendment provisions regarding Due Process, Equal Protection, and a fair trial by an impartial jury.

• The trial court erroneously denied bias where petitioner presents a Prima facie case of juror bias, and later deprived petitioner the opportunity to prove actual bias where petitioner made a prima facie claim of juror bias. The actions separately, and together, violate 14th, 5th, and 6th amendment provisions regarding Due Process, Equal Protection, and a fair trial by an impartial jury.

• Petitioner was erroneously denied his right to counsel of choice and isn't required to show his choice counsel would have obtained a more favorable outcome because the denial itself deprived the petitioner his right to counsel guaranteed in U.S.C. 6th and 14th amendment provisions.

• The petitioners conviction is based on evidence known to be false and compounded by the fact that the state attorney knowingly used perjured testimony, and/or testimony he should have known to be perjured, and/or inadmissible. Prejudice was the result of these admissions substantially and also a result of the prosecutions Misstatement of material fact used to obtain this conviction. Misconduct by the prosecution

is increasingly evident and violate 14th and 5th amendment provisions regarding Due Process, Equal Protection, and a fair trial by an impartial jury.

- The state unreasonably delayed in bringing the petitioner to trial in violation of U.S.C. 14th, 5th, and 6th amendment provisions regarding speedy trial, Due Process, and Equal protection and compounds these errors by denying petitioner a state-created liberty where trial exceeded its 120 day limitations placed by state statute.

- The jury verdict was rendered in the absence of proper instructions and legally inconsistent where the trial court usurps the function of a jury when it accepted a improper verdict, violating 14th, 5th, 6th, and 4th amendment provisions regarding Due Process, Equal protection, Double Jeopardy, and a fair trial by an impartial jury.

- The petitioners conviction is based on less than proof beyond a reasonable doubt of each and every element of the charged crimes and as the result of evidence that is insufficient to persuade a properly instructed jury of the petitioners guilt beyond a reasonable doubt in violation of U.S.C. 14th, 5th, 6th, and 4th amendment provisions regarding Due Process, Equal Protection, Double Jeopardy, and a fair trial by an impartial jury.

STATEMENT OF FACTS

Petitioner was arrested and interrogated on January 16, 2014, in St. Louis, Missouri. The following day the state charged him by information with 1st degree murder. The information was subsequently superseded by an indictment charging the petitioner with 6 offenses. Leading up to trial, there was many motion hearings and other appearances before the trial court including the June 3, 2014, and July 1, 2015, hearings that the trial judge erroneously disqualified petitioners choice counsel by unfair means. Additionally, the Pre trial hearings Occuring January 19, 2016, March 15, 2016, March 23, 2016, and also the status hearing of May 31, 2016, and motion hearing of June 3, 2016, all heavily weigh in on the state's multiple attempts at circumventing the petitioners speedy trial rights and petitioners claims of deficient performance by trial and Appellate counsels. August 23, 2016, a motion hearing took place just prior to jury trial where key factors regarding ineffective assistance of counsel, and maybe more noticeably, the multitude of other constitutional violations occur surrounding the claims made in this petition. Following the jury trial, the petitioner recieved a guilty verdict that the trial judge accepted on all 6 charges on September 22, 2016, including two counts of 1st degree murder for the single homicide, 3 aggravated discharge offenses, and a unlawful possession of a weapon by a felon charge. Petitioners trial counsel filed a

Motion for a new trial that was denied on December 5, 2016. That same day a sentence of 75 years imprisonment was imposed for count 1 murder, count 2 and count 3 justify my contention that the judge usurps the juries function, thus no sentence is passed on these two counts, 10 years imprisonment is imposed for count 4 aggravated discharge of a firearm to be served consecutive, Another 10 years imprisonment is imposed for count 5 aggravated discharge of a firearm to be served consecutive, and lastly 8 years imprisonment is imposed for count 6 unlawful possession of a firearm by a felon to be served consecutive for a total of mandatory 103 years of confinement in the illinois department of corrections.

Immediately after sentencing, petitioners trial counsel filed a motion to reconsider the sentence with the circuit court that was denied on February 10, 2017. That very same day That same day petitioners trial counsel filed a notice of appeal and asked for the appointment of the state appellate defender. On appeal to the Appellate Court of Illinois, Fifth District, Petitioners appellate counsel raised just a sole issue in his appellants brief dated December 27, 2019, though he and the petitioner communicated both by phone and by multiple letters between the two about raising all the issue trial counsel raised prior to trial, during trial, and post-trial, and some issues separate from the issues trial counsel raised. On one specific occasion, in a letter dated January 14, 2019, that the

petitioner furnished for the "Petition for leave to appeal" to the Illinois Supreme Court, the state appellate defender admits that a issue discussed had merit yet he refused to raise the issue in his brief. When the state recieved the one issue the appellate defender raised, they made a concession that they indeed had erred when they withheld 79 days from the petitioners Pre-Sentence investigation. On May 15, 2019, the petitioner received notice that the appellate court had entered final judgement 50 days prior but had not sealed this document, signed it, or mailed it off to notify the petitioner for more than 6 weeks. Presumably due to extreme flooding in the region. The judgement was dated March 27, 2019, but the clerk of the Appellate Court of Illinois, Fifth District, had not signed, sealed, or mailed the order until May 6, 2019. Upon receipt of the order the petitioner petitioned that court immediately for rehearing but was denied rehearing on May 31, 2019. When the petitioner recieved the denial of his petition for rehearing on June 5, 2019, he filed a motion announcing intent to petition the Illinois Supreme Court, and subsequently his petition for leave to appeal to that court was recieved on July 10, 2019. The supreme court of Illinois informed the petitioner on August 12, 2019, that their office had timely filed the petition and would allow the petitioner to proceed Pro Se as a poor person. After consideration, the court denied review on November 26, 2019, and announced that that mandate would enter Dec 31, 2019.

ARGUMENT

A major contention in my plea for relief is the fact that I was denied both effective assistance of appellate counsel and effective assistance of trial counsel. Trial counsel was ineffective, deficient, and unreasonable in his presentation of inadmissibility evidence during petitioner's motion to suppress hearing where he failed to vigorously raise the argument of petitioner's constitutional right to remain silent when he told interrogators he did not want to talk. Had trial counsel focused his argument more so on deliberately elicited statements the trial court would be bound by the privilege of constitutionally protected speech. There exists a reasonable probability that but for counsel's deficient performance the motion to suppress would be granted, as required by constitutional precedent, and the resulting prejudice could have been avoided entirely. Trial counsel's actions substantially and dramatically effect the verdict and the result of the suppression hearing is unfair, unreliable, and pervasively effects the inferences made by the jury at trial and ultimately altered the entire evidentiary picture in a negative way. More specifically, the petitioner indicated during questioning that his intent and desire was to remain silent and exercise his privilege against self-incrimination, yet police interrogators persisted and relentlessly subject the petitioner to compulsion. Subsequent statements were inadmissible at trial though the prosecutor presented them and the trial court erroneously

admitted these items into evidence over the petitioners numerous objections, including a motion to suppress evidence. Because the petitioner was not afforded the opportunity to remain silent due to compulsion, subtle or otherwise, the interrogation was operating on the petitioner to overcome his will and free choice in the production of a statement after the privilege had been invoked. The 5th, 6th, and 14th amendments to the United States Constitution, and its progeny, including Article 1 sections 2 and 10 of the Illinois State Constitution, require suppression of incriminating statements which were obtained after the petitioner had announced in any manner a desire, intent, and will to remain silent, discontinue questioning, and await counsel from an attorney. Use of these statements at trial violate Due Process of law, Equal Protection of law, and the fundamental fairness of trial before a impartial jury. More specifically, On the 23rd day of August, 2016, the trial court decided upon a motion to suppress filed by petitioners trial counsel where on page 2 of its transcript, the judge stated that it would be making a inquiry as to who initiated further discussion after petitioner invoked the constitutional privilege. At face value the court makes the concession hear that the petitioner in fact has at several points made a valid invocation of his rights, yet it would be inquiring had the petitioner furthered conversation or had police interrogators compelled further statements in

violation of the prohibitions. On page 3 of this motion hearing transcript, on lines 1-10 the court made note that on page 15 of the transcript of the interrogation the petitioner "tells Detective Ryan he "Doesn't want to talk anymore." And Detective Ryan says, "What about D'Lonta?" And Mr. Banks replied, "I don't want to talk anymore." This is conclusive information by the trial court's own revelation. The official compulsion and coerciveness of Detective Ryan's question is quite frankly, obvious. He noticably and absolutely disregards the petitioners firm, direct, and adamant indication of petitioners intent, desire, and will to remain silent which would undoubtedly preclude interrogators from ascertaining to any information pertinent to the investigation, especially one so consequential as a question in regards to a material witness, D'Lonta Perkins. It is entirely impractical and fundamentally unfair in every sense of the term, most noticably these circumstances mock Due process and equal protection, and simply shock the conscience when viewed in its entirety. Where the trial court concludes that the petitioner initiated discussion under these circumstance evinces a clear abuse of discretion and proves improper if not arbitrary. It is overtly obvious that petitioner was intent on discontinuing discussion of the crime under investigation as this was proclaimed on more than 5

separate occasions, most pointed out by the trial judge and a few overlooked by the trial judge. None-the-less when considering the totality of the circumstances, petitioners intent and reliance on his privilege against protected speech and the assistance of counsel is certain. The trial court itself points out 5 occasions where the petitioner either invoked the right to remain silent or invoked the assistance of counsel, added upon this was the precedent established inherent compulsive nature of custodial interrogation. One could assume the police interrogators who interrogated the petitioner learned their procedure directly from the stratagems described in *Miranda v. Arizona*, 384 U.S. 436 of 1966 as being the "third degree", and trades on the weaknesses of the accused. Their style of interrogation was inquisitorial in nature and bears impropriety's disgusting face. They employ the atmosphere of psychological deprivation - isolation, unfamiliarity, and a unwavering air of confidence in the petitioners guilt where the sheer weight of his personality would exert an oppressive atmosphere of dogged persistence, they employ the infamous "Mutt and Jeff" / Good cop - Bad cop technique but ultimately it is the relentless questioning without a prospect of surcease that serves to overwhelm and overbear the most. But for the official compulsion and deliberate solicitation of incriminating statements, exacerbated by the detectives disregard for petitioners constitutional request

to remain silent and the assistance of counsel, the petitioner would not have made a statement as was his will and right. At *Malloy v. Hogan*, 378 U.S. 1, 8 (1964) the justices explain the privilege as "fulfilled only when the person is guaranteed the right "to remain silent unless he chooses to speak in the unfettered exercise of his free will." The reasoning in *Malloy* made clear that the voluntariness doctrine is paramount and encompasses all interrogation practices which would likely exert pressure on an individual as to disable him from making free and rational choices. *Escobedo v. Illinois*, 378 U.S. 478 (1964), is similar in that the petitioner's abdication of his constitutional right was not made without compulsion and later statements were in fact the product of compulsion, improper, and inadmissible for trial which warrants reversal in this specific situation. The interrogators actions certainly effect the entire trial irretrievably as his right to "Not want to talk." is irretrievably lost when they were disregarded. It is absolutely incongruous to a system of justice to permit the prosecution to use the elicited statements, and their resulting conclusions and inferences, as evidence to convict the petitioner in the minds of the jury. At *Escobedo*, the supreme court acknowledges that our constitution "strikes the balance in favor of the right of the accused to be advised by his lawyer of his

privilege against self-incrimination." Undoubtedly, this suggests that the privilege against self-incrimination is the meat of the issue and should be treated as such. It has well been established in precedence and common logic, that juries tend to lend substantial weight to confessions, partial or full alike.

Petitioners declarations were clear and so also was the petitioner overborne to the point where his capacity for self-determination critically impaired. The admission of these constitutionally barred statements reasonably prejudice the petitioner and actual quantification as to the credit, inference, and weight the jury gave to this erroneous, and prejudicial admission.

The Appellate defender's performance was deficient for not bringing up all the issues described in this issue, but more so this issue of deliberately elicited incriminating statements and their erroneous admissions at trial was so obvious his performance was shocking to the conscious. His unreasonable omissions squandered his chance at receiving relief on direct appeal and prejudice here is evident and shameful.

Had the trial counsel, and later the Appellate counsel, raised the issues made apparent by the unexperienced, completely overwhelmed, petitioner, the petitioner would have received a reversal for these errors. The Appellate defenders actions burden tax payers, the Petitioner and his family, Judicial integrity and efficiency, and the case loads of the appellate process. In many ways this

specific situation resembles the illinois case Freeman V. LANE, 962 F.2d 1252 (1992). In that case, the petitioner Gerald Freeman did not raise the self incrimination issue on direct appeal but the supreme court held that cause and prejudice was evident an excused that error. Cause is established in that case by the failure of his appellate counsel on direct appeal to raise and preserve the constitutionally-dimensioned issue central to both that case and the instant case. In fact, his appellate attorney and the petitioners appellate attorney both on raised a sole superficial issue for review. Prejudice was there established, as it should be here, because the issue abandoned by counsel was a meritorious one. The prosecutors there violated his Fifth amendment privilege, as the also violated mine. Therefore, Mr. Freeman's case was reversed after championing illinois stringent res judicata laws and at great expense to justice, integrity, and tax dollars. The trial judge should have rectified this issue, saving tax payers the money spent housing illegally imprisoned persons, and the cost of collateral review and potentially a civil lawsuit in pursuit of monies. So also could he have recieved effective counsel at the Appellate level, and again risk diverted, problem solved. Then also on post-conviction, then also to the Appellate court on collateral review. Then also upon consideration by the illinois supreme court, finally the district court after

all the erroneous decisions, they issue was rectified. I pray that the court rectifies this issue and reverses this case to avoid a similar circumstance. I now can and have proved constitutional errors resulting in prejudice, though it is your discretion, I ask that you save myself and state, the time and money of arbitrary subsequent reviews that will end in a reversal ultimately. Petitioners appellate counsel also failed to argue or raise issue that the trial court accepted legally inconsistent verdicts that violate Double jeopardy and One act, One crime legislation. The trial court excused the jury rather than requiring further deliberations to resolve inconsistency. The trial judge had a duty to apprise the jury that it could not legally find the defendant guilty of counts 1 and 2, or Counts 3, 4, and 5. When the jury returned with the legally inconsistent verdicts, the trial court had a obligation to send the jury back for further deliberations consistant with new instructions to resolve the inconsistency. Illinois v. Alamo, 103 Ill.2d 54 (1985) points out that a trial judge faced with inconsistent verdicts may not properly enter judgement on one or more of the Verdicts, which would absolutely usurp the function of the jury by "second-guessing" which of the verdicts was intended by the jury and which was a result of some misconception. The trial judge accepted a legally inconsistent verdict when

he accepted guilty verdicts on all counts 1-6. A sentencing, the trial judge usurps the jury's function by entering a sentence on count 1 but not on counts 2 and 3 because they violate One Act, One Crime restrictions. The petitioner thus receives a 7.5 year sentence and he could arguably have gotten a sentence that could not exceed 30 years had the trial judge not arbitrarily rejected counts 2, and the lesser crime count 3. The jury once instructed of the legal obligation to choose between 1, 2, or 3, could have chosen count 3 and his time would be 65 years more lenient. Not only was the trial judge guilty of reversible error, the appellate counsel is deficient for not arguing the issue because clearly prejudice is established by the meritorious warrant for reversal.

There was 5 days worth of evidence alleging the prior crimes evidence that the trial judge denied when petitioners trial counsel raised issue at the motion for new trial hearing held at sentencing. The appellate counsel refused to raise these issues erroneously. At Voir dire the trial judge refused to excuse jurors for cause though they clearly said the testimony of officers holds more weight to them than anyone else. This is prejudicial especially when my trial had testimony of Federal agents, multiple detectives, and police department. This issue should have

Been raised on direct appeal by Appellate counsel. Also the trial court disqualified Margaret Degen, petitioner's choice of counsel arbitrarily. The trial judge admits to no actual conflict, and that in a lesser case he would potentially not disqualify counsel as he did in a murder case. This doesn't afford the petitioner equal protection and should have been raised by appellate counsel. Trial counsel failed to call witness Robert Pleasant who wrote 2 affidavits available in discovery that impeached 3 state witnesses who claimed petitioner made confessions to the crime. Had trial counsel called Pleasant the jury reasonably would have put less weight on the testimony of the alleged confessions. Confessions holding the substantial weight due with juries makes this more so substantial and the trial counsel was ineffective for this. Prejudice resulted and the appellate attorney should have raised this issue, which resulted in further prejudice. Cumulative error deems this case a farce of justice. Had so many of these errors not occurred, the defense would have been far more persuasive, the added prejudice of each error affords the petitioner a mere semblance of Justice.

Conclusion

Wherefore, Brandon Banks, respectfully requests that a writ of certiorari issue to the Appellate Court of Illinois, Fifth Judicial District.

respectfully submitted, Brandon Banks, *Bar, Brandon*