

RKIS

NO: 19-8518

[Signature]
LEGAL MAIL
Provided to Florida State Prison on
10/30/20 for mailing by *[Signature]*

IN THE
SUPREME COURT OF THE UNITED STATES

Dexter C. Newson - Petitioner

VS.

MARK Inch, Secretary Dept of Corr: - Respondent

Petition For Rehearing of denial
OF WRIT OF CERTIORARI pursuant to U.S.C.
RULE 44.1, & 44.2

Dexter C. Newson DC# U31782
NAME

P.O. Box 800, Florida State Prison-West Unit
ADDRESS

Raiford, FL 38083
City, State, Zip Code

904-532-1011 / 352-286-7780 "MY Family."
Phone number

REASONS FOR REHEARING

Comes now Petitioner Dexter Newson would like to request this honorable U.S. Supreme Court to rehear his grounds raised on his Writ of Certiorari petition. Newson asserts as a Pro Se petitioner whose a Layman in Litigating Law he may have misworded his arguments due to being ill equipped to represent himself as this U.S. Supreme Court held in Martinez v. Ryan, 566 U.S. 1, 14 (2012), however Newson assures this honorable Supreme Court that his issues raised in his petition for Writ of Certiorari are Substantial, that his trial Counsel's ineffectiveness of assistance has violated his Constitutional amendment Rights of the 6th and 14th amendments of due process, right to a Fair trial, and right to Compulsory process to obtain a witness in his favor as guaranteed by the 6th Amendment of the U.S. Constitution, which prejudiced him.

Newson also asserts that the Court of Appeals has entered a decision in conflict with that of other U.S. Court of Appeals and has so far departed from the accepted and usual course of Judicial proceedings, such a departure by the lower court as to call for an exercise of this Court's Supervisory power.

In regards to Ground 1 "Did THE 11th Circuit Court of Appeals Error by Denying Petitioner Newson's appeal without granting him an evidentiary hearing on grounds 1 & 2 of his COA and appeal to determine why his

Trial Counsel denied him Compulsory process to Call a witness in his favor as guaranteed by the 6th amendment of the Constitution."

On April-26-2019 U.S Circuit Judge of the 11th Circuit U.S Court of appeals granted petitioners Motion for Certificate of Appealability on issues 1 & 2 "Ruling that Nelson has shown that reasonable Jurist could debate whether his Claims (1 & 2) regarding a text message that he either composed himself, or received and forwarded to another witness in the moments following the shooting presents Substantial ineffective assistance Claims of Trial Counsel, Claims that establish Cause to excuse procedural default under Martinez v. Ryan 566 U.S 1, 14 (2012) because Nelson stated that he repeatedly asked Trial Counsel to Call his niece who sent him the text message as a putative witness.

On Dec-20-2019 the 11th Circuit of the U.S Court of Appeals denied Nelsons appeal.

However Nelson asserts the 11th Circuit erred by denying his appeal without granting him an evidentiary hearing. "Nelson relies on this honorable Supreme Court ruling in "Serrano v. United States, 135 S.Ct 1449, 191 L.Ed 2d 402 (2015):

Holding Evidentiary Standards: "A district Court shall hold an evidentiary hearing on a habeas Corpus petition unless the Motion and the file and records of the case conclusively show that the prisoner is entitled to no relief."

"28 U.S.C. § 2255(b)" IF the prisoner alleges Facts IF True would entitle him to relief then the district Court should Order an evidentiary hearing and rule on the Merits of his Claim. However a District Court is not required to hold an evidentiary hearing IF the Petitioners allegations are Frivolous and Contradicted by the record."

Newson asserts that the State has Failed to refute his Claims by the record In Fact to the Contrary, his Claims are Supported by the record where as In his trial testimony he testified that his niece sent him the text Message that the State argued he drafted to brag about the Shooting. The record Shows Newson testified he did not Create this text Message. In his Petition he Cited this portion of the record to Support his Claim, he also attached a notarized Shown Affidavit by Angel Newson stating that She drafted this text Message and Sent it to Newson.

The Origin of this text is so vital to Newsons Case because Only through this text Message Was the State able to argue and prove the elements of the Charge Second degree Murder. Their theory Was that Newson Created this text to brag about the Shooting."

The ruling by the district Courts is unsupported by the record and therefore erroneous.

Newson also relies on this Supreme Court ruling in Serano v. United States, 135 S.Ct 1444, 191 L.Ed 2d 402 (2015)

holding that because the Court Cannot resolve a Factual dispute

Solely upon affidavits an evidentiary hearing is warranted in order to determine why Counsel failed to act effectively.

Newson asserts the Courts ruling is unsupported by the record and therefore in conflict with the established rules and procedure as to how claims of ineffective assistance of trial Counsel failing to call witness shall be decided on when the record and a sworn affidavit supports the Petitioner's claims. Newson asserts that his alleged facts are true, supported by his trial testimony of the record which is corroborated by an notarized sworn affidavit which in accordance with this Supreme Courts Evidentiary Hearing Standards warrants an evidentiary hearing to determine why trial Counsel failed to act effectively." See also Kohler v. Cain 214 F.3d 1350, 2000 U.S. App. Lexis 11538 (5th Cir. La 2000).

Petitioner Newson prays in good faith that this honorable Supreme Court will grant his rehearing and order the lower courts to hold an evidentiary hearing to determine why trial Counsel failed to act as a reasonable professional attorney.

In regards to Ground 2). Was Trial Counsel ineffective for violating Petitioner Newson's 6th Amendment Constitutional right by denying him compulsory process to call Angel Newson as a witness in his favor?" Newson asserts that:

The 6th Amendment OF the U.S Constitution guarantees a defendant the right to be given Compulsory process to Obtain Witness in their Favor."

Newson asserts by trial Counsel Failing to Call Angel Newson as a putative witness he Violated Petitioner's 6th Amendment Constitution right to be given Compulsory process to Obtain Witness in his Favor.

Newson relies on the decision in Kohler V. Cain, 2000 U.S App Lexis 11538 (5th Cir. La 2000) holding that trial Counsel denied Kohler Compulsory process When Counsel Failed to Call Richard as a witness and that by doing so Counsel Failed to Call a witness that would directly Contradict the Sole evidence Linking Kohler to the Crime".

Newson asserts the Same Constitutional Violation and error OF Ineffective assistance OF trial Counsel is true For his Case and that he Suffers the Same harm & prejudice as Kohler because Angel Newson's testimony would directly Contradict the Sole evidence the State Used to build their Case theory on in order to prove the elements OF Second degree Murder.

During trial and Closing arguments, the States Whole Case rested upon a text Message that read "Just Reported: MS. Queen Son Just passed away Jan-7-2009. RIP YALL be Care in these Streets. I'm the Shit".

The States theory was that Nelson created this text to brag about killing Gaskin. Despite State witness testimony of the altercation proving that Gaskin was the initiator and the aggressor of the incident and witness testimony stating Nelson told Gaskin 3 or 4 times to move so they could leave in which Gaskin continued to block their path, the State argued this text demonstrates the elements of second degree murder in which the judge denied Petitioner's motion for judgement of acquittal based on the State's argument. Doc 8 - App 5 pg 449-450. This was the only piece of evidence the State could use to demonstrate the element of hatred, spite, depraved mind.

However Nelson testified that he did not create this text, he testified that his niece Angel sent him the text and he forwarded it to Mindy. Doc 8, App-5, pg 619.

The State called Nelson's credibility into question when they pointed out to the jury that Nelson couldn't have forwarded this text because there was no FWD in it like other messages he forwarded Mindy. This made Nelson appear as a liar to the jury. With no testimony from the direct person who created the text and sent it to Nelson, the jury was left to only believe the only evidence they seen, the only argument they heard that had some form of evidence with it.

Mindy testified she forwarded this same exact text to others also, however it should be noted: that review of her phone records of text messages reveal there was no FWD in this text when she forwarded it as well. Had trial counsel thoroughly investigated her text records he could have pointed this out to the jury. Especially being he knew the State was using this to discredit Petitioner's credibility.

Trial Counsel knew the State would use this one specific text to argue the elements of the crime and yet he failed to act as a reasonable professional Counsel when during trial the dispute was about whether Newson created this text to brag? or whether Newson received this text from someone else?

Trial Counsel should have called Angel Newson as a witness in Petitioner's favor just as Petitioner requested him to do numerous times leading up to trial and during trial.

It is well established that in order for an petitioner to demonstrate the requisite prejudice, the Appellant must show not only that this witness testimony would have been favorable at trial but also that the witness would have testified at trial.

Newson asserts that had Trial Counsel called Angel as a witness in his favor as the 6th Amendment guarantees him a right to have compulsory process to obtain witness in his favor and as Newson repeatedly requested him to do, Angel's testimony would have been favorable to Newson because

(1) it would have rebutted the State's theory beyond a reasonable doubt. Being that the State's theory rested upon this text message arguing that Newson creating the text to brag about killing Gaskin shows elements of second degree murder, by Angel testifying she drafted the text message and sent it to Petitioner along with her cell phone text records as well to back up

her and Newson's testimony it would have proved to the Jury beyond a reasonable doubt Newson did not create the text as the State argued, Newson did not brag about killing Gaskin as the State argued and most importantly her testimony would have corroborated Newson's testimony and proved to the Jury beyond a reasonable doubt that Newson was telling the truth about receiving the text from his niece and in fact did not possess the elements of second degree murder because he did not commit the act out of hatred, spite, nor ill will. He did not possess a depraved mind at the time of the shooting nor afterwards, he was only defending himself.

(2) Angel Newson would have testified at trial. She was present during trial all 3 days of trial as well as willing to testify, trial counsel had knowledge of this and still failed to use her to truthfully testify and rebut the State's theory beyond a reasonable doubt while simultaneously corroborating Newson's testimony. (3) Her testimony would have changed the outcome of the trial had the Jury been able to hear her testify to creating the text message and sending it to Newson as well as hear her testify to the phrase "I'm THE Shit" as being her text message signature just as Newson testified to.

There exists a reasonable probability that the Jury would have found Newson not guilty of second degree murder and instead convicted him of the lesser included offense of manslaughter based on the elements

OF Second degree Murder not being Met. Only through this text was the State able to argue the elements OF the Crime as being established. pg 449-450 & 750

Without Angers testimony to refute the States theory that Newson Created the text to brag, the Jury was left to only believe the States theory.

Newson suffers the same prejudice as Kohler in Kohler v. Cain 2000 U.S. App. Lexis 11538 (5th Cir. La 2000). Trial Counsel's ineffectiveness deprived Petitioner of a fair trial and violated his 6th amendment Constitutional right to be given Compulsory process to obtain witness in his favor.

Newson attached a Notarized Shown Affidavit of Angel Newson to each of his petitions. He relies on this Court's ruling in Serano v. United States, 135 S.Ct 1444, 191 L.Ed 2d 402 (2015). Holding that because the Court cannot resolve a Factual dispute solely upon affidavits, an evidentiary hearing is warranted in order to determine why Counsel failed to act effectively.

In regards to Ground 3 "Was Trial Counsel ineffective for violating Petitioner's 6th and 14th Amendment Constitutional Rights of due process and a Functioning Counsel by failing to investigate, subpoena and obtain Newson's Cell phone text message records to use as exculpatory and rebuttal evidence?"

Newson asserts this ground is similar to Ground 2 and that he suffers the same prejudice.

During the course of trial the State's sole theory relied upon a text message Newson sent Mindy.

This text message stating "Just Reported: Ms. Queen Son just passed away on Jan-7-2009. R.I.P. Y'all be Care in these Streets. I'm the Shit" was the sole evidence the State relied on to demonstrate the elements of Second degree Murder. The State argued this text showed hatred, spite, an depraved mind. Their theory was that Newson created this text to brag about the shooting. Doc 8, App 5, pg 444-450 and 750.

However the origin of this text message was in dispute because contrary to the State's theory Newson testified that he did not create this text nor brag about killing Gaskin. He testified his niece sent him the text and he simply forwarded it. The State argued he couldn't have forwarded it because there was no FWD in this text like other forwarded text he sent Mindy. The State relied on Mindy Goble's text records. "Note" Mindy Goble text records show that just as there was no FWD in the text when she received it from Newson, there also was no FWD in the text when she forwarded it to someone as well."

Had trial counsel adequately investigated the text records used against Newson he could have pointed this out to the jury to cast doubt on the State's theory.

Newson asserts that prior to trial and during trial he requested Trial Counsel to Subpoena and Obtain his phone records to use as rebuttal evidence to Contradict the States theory and Corroborate his testimony. However Trial Counsel disregarded Newsons request and Failed to properly investigate, Subpoena and Obtain the only piece of evidence that Could refute the States theory beyond a reasonable doubt. Had he Obtained Newson's text Message records they Would have Showed the Jury that Newson In fact recieved this text from his niece as he testified to, it Would have Showed the number Newson recieved the text From and Most importantly it Would have proved beyond a reasonable doubt that Newson Was telling the Truth, he did not Create the text Which Means he did not brag about Shooting Gaskin and therefore did not possess the elements of Second degree Murder as the State argued this text demonstrated.

There exist a reasonable probability that had trial Counsel obtained Newsons text Message records the Outcome of trial Would have been different.

Trial Counsel relied on the States evidence Instead of producing exculpatory evidence to Support Newsons defense and testimony, he Left the Jury to believe the only evidence they Seen, this Was the text Message evidence Used against him.

Newson asserts his trial Counsels Failure to Obtain his phone records deprived him of a Fair trial because

the text Message evidence was one sided. Only Mindy Gibbs text records were produced to show Messages she received from Newson, Newson's text Message records were never introduced.

Despite his testimony stating he didn't create the text but was sent the text and forwarded it to Mindy, the Jury rejected his testimony and believed the only text Message records they seen.

In United States v. Siddiqui, 235 F.3d 1318 / 1322 (11th Cir 2000) the 11th Circuit held that testimony that a person received a text or email from another is not sufficient by itself to authenticate the identity of the sender. Also Walker v. Harley-Anderson 4D19-2216 - Sept-9-2020.

This Ruling by the 11th Circuit proves that the only way trial Counsel could have acted as a reasonable attorney is by obtaining Newson's text Message records to show the Jury and the Courts that Newson received the text from someone else and then forwarded it to another person. Unfortunately by the 11th Circuit denying his appeal contradicts their ruling.

As this U.S Supreme Court held in Gasciminski v. State 132 So.3d 678 (Fla. 2013) Evidence may be authenticated by examination of its appearance, contents substance, internal patterns or other distinctive characteristics taken in conjunction with the circumstances. "

In Order For the Jury to Make a Fair Judgement the Jury has to Weigh the totality of the evidence, not just a piece but the whole of what they've heard and seen. Because of Trial Counsel's ineffectiveness, the Jury was left to believe the only text message evidence they seen, this was the text message evidence used against Newson, this evidence could have and should have been rebutted beyond a reasonable doubt.

Trial Counsel should have used compulsory process to subpoena and obtain Newson's text message records and used them to rebut the State's theory beyond a reasonable doubt by corroborating Newson's defense testimony. Carpenter v. United States 138 S.Ct 2206, Nov-29-2017.

Finally Newson asserts trial Counsel's ineffectiveness not only prejudiced him and deprived him of a fair trial but trial Counsel's incompetent performance also violated his 6th Amendment Constitutional Right to due process and a functioning Counsel.

Holsomback v. White, 133 F.3d 1382 (11th Cir. 1998).

In regards to Grounds 4, 5, 6, and 7 ~~due to~~ not wanting to exceed the page limit for rehearing, Petitioner Newson would like to ask this honorable Supreme Court, if it's possible to review his Writ of Certiorari on those grounds or allow him the opportunity to re-litigate them.

However being that the State built their whole case on

this specific text message by arguing this message establishes the elements of the crime charged, Newson prays in Good Faith that this Supreme Court will Grant this rehearing, vacate its order denying his petition for writ of Certiorari and remand for the lower court to hold an evidentiary hearing to determine why his trial counsel failed to use compulsory process to subpoena and obtain a witness in his favor as well as why he failed to use compulsory process to subpoena and obtain Newson's text message records to rebut the states theory and support petitioners defense and testimony.

Newson Prays this Supreme Court grant this Rehearing in light of Hibbs v. Winn 542 U.S. 88: Jan-20-2004
Abdirahman v. United States 201 Fed 2d 1112 U.S. Lexis 4114.

Sarano v. United States, 135 S.Ct 1449, 191 L.Ed 2d 402 (2015):

Kohler v. Cain 12000 U.S App Lexis 11538 (5th Cir. La 2000).

OATH

I Hereby Declare that All Facts IN Petition For
Rehearing OF Writ OF Certiorari are true.

1s/ ~~Dexter C. Newson~~

Dexter C. Newson

Dct# U31782

Florida State Prison - West Unit.

P.O. Box 800

Raiford, FL, 32083

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of
the foregoing document has been placed into the
hands of prison officials at Florida State Prison
for Pre-Paid First Class U.S. Mailing to the
Supreme Court of the United States, Washington
D.C., 20543-0001.

1s/ ~~Dexter C. Newson~~

Dexter C. Newson

Dct# U31782

Florida State Prison - West Unit

P.O. Box 800

Raiford, FL, 32083

PROOF OF SERVICE

I declare (or Certify, Verify or State) under penalty
of perjury that the foregoing is TRUE and correct and
that this Petition for Writ of CERTIORARI was
placed in the prison Mailing System on _____
(Month, day, Year).

Executed (signed) on _____ date.

/s/ Debra L. Neuman
Signature of Petitioner

IF the person signing is not petitioner, State relationship
to Petitioner and explain why Petitioner is not signing
this Petition.