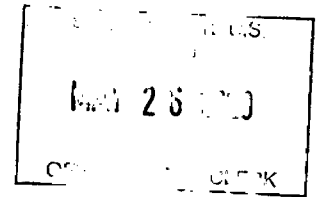


19-8591  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES



Frederick Pennington, Jr. ---- PETITIONER

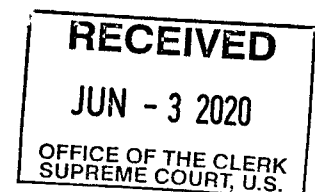
VS.

STATE OF ARKANSAS --- RESPONDENT(s)  
ON PETITION FOR WRIT OF CERTIORARI TO

United States Court of Appeal for the Eight Circuit

PETITION FOR WRIT OF CERTIORARI

Frederick Pennington, Jr.  
*Frederick Pennington, Jr.*  
P.O. Box 1000  
Wrightsville, Arkansas 72183  
501-897-5806



### **QUESTION(S) PRESENTED**

1. Does the improper waiver of Exclusive Juvenile Jurisdiction, (Title 47 Arkansas Code Annotated 45-413(1977)), allow for the dismissing of the previous conviction and call for a new trial?
2. Does the discovery of new exonerating evidence, that had been withheld by the Prosecution, and uncovered at a Amended Sentencing Hearing, grant the defendant the Right of a Second in Time Petition for Habeas Corpus?
3. Does the discovery of new exonerating evidence, that had been withheld by the Prosecution, and uncovered at a Amended Sentencing Hearing, wipe clean the slate of Post Conviction Remedies?
4. Does the discovery of new exonerating evidence, that had been withheld by the Prosecution, and uncovered at a Amended Sentencing Hearing, grant the Defendant the Right to Motions of Discovery?
5. Because of Arkansas Code Annotated 16-93-604(c), is Petitioner Pennington in the state of being Max Flat?

## LIST OF PARTIES

Frederic Pennington, Jr.

:Petitioner

v.

State of Arkansas

Dexter Payne, Director, Arkansas Department of Corrections  
6814 Princeton Pike, Pine Bluff, Arkansas, 71602

Randy Watson, Warden, Arkansas Department of Corrections  
Wrightsville Unit,  
P.O. Box 1000  
Wrightsville, Arkansas, 72183

:Respondents

John Felts, Chairman, Arkansas Parole Board  
105 West Capitol Avenue, Suite 500  
Little Rock, Arkansas 72201  
(501)682-3850

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## **TABLE OF AUTHORITIES CITED**

### **CASES**

Shields v. Gibson, 5:18-cv-000265  
Davis v. Kelly, 5:19-cv-00147  
Pennington v. Hobbs,, S. Ct. Ark., 2014, Ark, 441  
Robinson by and Through Robinson v. Shock, S.Ct. Ark. 282, Ark., 262  
McQuiggin v. Perkins, 569, U.S., 383, 133, S.Ct.,1924  
Brady v. Maryland, 373, U.S. 83,83,S.Ct.,1194  
Kent v. U.S., 383, U.S., 541, 11 Ohio Misc. 53, 86, S. Ct. 1045  
Application of Gault, 387, U.S., 1, 87, S.Ct. 1428  
Speck v. Auger, 558, F. 2d, 394 (8th Cir, Iowa, 1977)  
Ruiz v Felts, S.Ct. 2017, Ark., 85 (March 9,2017)

### **STATUTES AND RULES**

Arkansas Constitution Article 2 § 13  
Act 93 of 1977, section (a) First time Youthful Offenders Act  
Act 93 of 1977, section (a) First time Youthful Offenders Act  
Arkansas Code Annotated 16-93-602 Felones Committed between  
April 1, 1977 and April 1, 1983-- Laws applicable  
Arkansas Code Annotated 16-93-603 Felones Committed between  
April 1, 1977, and April 1, 1983-- Inmate Classification  
Arkansas Code Annotated 16-93-604, section(c) 1977, Felones Committed between  
April, 1977 and April, 1983-- Parole Eligibility  
Arkansas Code Annotated 16-93-615 enacted 2011  
Title 47, Arkansas Code Annotated 45-413 (1977)

### **OTHER**

Constitution of the United States, Article 1, section 9, and 10  
Constitution of the United States, Article 2.  
Declaration of Rights §17 Attainder, ex post-facto law  
Constitution of the United States,4th Amendment  
Constitution of the United States,5th Amendment  
Constitution of the United States,6th Amendment  
Constitution of the United States,7th Amendment  
Constitution of the United States,8th Amendment  
Constitution of the United States,14th Amendment

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITON 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 opinions of the United States court of appeals appears at Appendix B to the petition and is

☒ reported at Pennington v Payne, et al; No. 19-3149, March 3, 2020  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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

☒ Reported at Pennington v Kelley 5:19-CV- 00067; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished

☐ For cases from state courts:

The opinion of the highest court to review the merits appears at Appendix \_\_\_\_\_ 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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ for cases from **federal courts**

The date on which the United States court of Appeals decided my case was March 03, 2020.

☐ 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~~ April 19, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ 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).

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## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Article 1, Section 9, and 10 of the U.S. Constitution: No Bill of Attainder or ex post facto Law shall be passed; No State shall pass any bill of Attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of Nobility,

Article 2. Declaration of Rights § 17 Attainder- Ex post facto law. No Bill of Attainder. ex post facto law, of law impairing the obligation of contract shall ever be passed, and no conviction shall work corruption of Blood or Forfeiture of Estate. Arkansas Constitution

Article 2. section 13 of the Arkansas Constitution

Amendment IV, Amendment V, Amendment VI, Amendment VII, Amendment VIII, and Amendment XIV of the U.S. Constitution.

(A.C.A.) 16-93-602-16-93-604(c)(1977),

Act 93 of 1977, Section (a) First-time Youthful offender 14-20 Years old.

(A.C.A.) 45 -413 (1977) of title 47 Juvenile Code

## STATEMENT OF CASE

Before a Juvenile can be tried in the Criminal Division of the Circuit Court, they must receive a Juvenile Court Transfer Hearing in the Juvenile Division of Circuit Court, which includes an Investigation Hearing of the Ten (10) mitigating factors, and written Findings: Arkansas Code Annotated.45-413 (1977)..

When a state statute requires that a juvenile transfer Hearing be held in a Juvenile Court, or Juvenile Division of Circuit Court, failure to do so is an improper waiver of the juveniles jurisdiction. *Kent v. United States*, 383, U.S. 541, 11 Ohio Misc. 53,86, S. Ct., 1045, and application of *Gault*, 387, U.S., 1, 87 S.Ct., 1428,18, L.Ed., 2d, 527, 40.0.0 2d, 378, and *Speck v. Auger*, 558, F. 2d, 394 (8th Cir, Iowa, 1977), *Robinson by and Through Robinson*, supra, *Kent*, supra, *Gault*, Supra, and *Speck*, Supra.

The subject matter of Jurisdiction could not be waived, can be raised at anytime, and first time on Appeal: *Taylor V. State*, 354, Ark., 450,125, S.W. 3d, 174 (2003) .

The VI Amendment of the United States Constitution guarantees the right to effective counsel.

Defendants, and their Council, have a right to any, and all exculpatory evidence collected by the Police, and Prosecution. (*Brady v . Maryland*)

Re-sentencing wipes clean the slate of all previous Post Conviction Appeals. (see *Shields* , supra, and *Davis* ,supra)

New exculpatory evidence is reason for filing a Habeas Corpus. (see *Brady v. Maryland.*)

The Arkansas Supreme Court has ruled that Constitutional rights to counsel had been extended to juveniles. (see Robinson by and Through Robinson v Shock) The Juvenile Code upholds that right in specific terms (A.C.A. §45-413). When that right has been denied to the juvenile, within the juvenile commitment process, then an order emanating from such a proceeding, which does not reflect the fact that the juvenile was represented by legal counsel, will not constitute a facially valid order, and State Habeas Corpus Relief must be issued. (A.C.A.) 16-112-101-123

Petitioner Pennington's first lawyer, Christopher Mercer, Jr. asked the Municipal Court Judge, on October 23, 1977, for a Transfer Hearing, the Municipal Court Judge Said "No! He, or they killed someone, They're charged with murder! I'm sending it over to Pulaski County Circuit Court, Fourth Division. Mr. Mercer then said, "when you were a lawyer, you asked for them (transfer hearings)" , and the municipal Court Judge said "that they never gave him them (transfer hearings) either".

Petitioner Pennington was sent to Circuit Court Judge Richard B. Addikisson, in the Circuit Court of Pulaski County, Arkansas, Sixth Judicial District, Fourth Division. Where, on March 1, 1978, Petitioner Pennington was convicted, and sentenced as an adult while he was, in truth, a sixteen (16) year old minor.

Petitioner Pennington was represented by Gene Warsham, who refused to raise Petitioner Pennington's Juvenile Court Jurisdiction rights.

The Deputy Prosecuting attorney was Lloyd R. Haynes.

On April 11, 2016 Petitioner Pennington had a Re-sentencing Hearing.

At the Re-Sentencing hearing, Petitioner Pennington learned that exculpatory evidence, in the form of 1) a color photograph of the known suspects, and 2) an eye witness statement, describing the suspect, had existed in 1977, and had been withheld, by Prosecutor Haynes, from Petitioner Pennington, and his counsel.

The U.S. District Court E.D. Ark, Pine Bluff Division said in Pennington v. Kelly, that they do not have Jurisdiction to entertain any more of Petitioner Pennington's motions.

The Arkansas Supreme Court has stated that State Habeas Corpus could not grant relief for ineffective assistance of counsel. That Petitioner Pennington could only seek relief in a Rule 37 Petition for Post Conviction Relief, and when Petitioner Pennington sought such relief, the State of Arkansas, through the Arkansas Attorney General Office, said Petitioner Pennington, because of a previous Rule 37 filing, was procedurally bared from filing.

By refusing to request a Juvenile Court Transfer Hearing, and failing to ask the Prosecution for any exculpatory or undisclosed evidence, Petitioner Pennington's, Circuit Court, counsel showed themselves to be an Ineffective Assistance. And is reason enough for granting Petitioner Pennington a trial based upon Ineffective Assistance.

By his statement the Municipal Judge showed that he knew Petitioner Pennington was to be given a Juvenile Court Transfer Hearing, and yet he refused to do so. The Circuit Judge, and Prosecutor knew, or should have known, that Petitioner Pennington had a right to such a hearing, and yet they all denied him his right to the hearing.

The Prosecutor certainly knew that exculpatory evidence is to be given to the Defense, and yet the Prosecutor did not do so. Had this evidence been given to the Defense Petitioner

Pennington would not have signed a Plea Agreement. The witness statement would have been enough to exonerate Petitioner Pennington, and no reasonable Jury would have convicted him.

Because of the violation of his Right to a Juvenile Court Transfer Hearing, and the violation of his Constitutional Rights by the withholding of evidence, a youth of only Sixteen (16) years age was pressured into a Plea Agreement, and an innocent man has been incarcerated since 1978.

Petitioner Pennington was sentenced under Act 93 of 1977, section (A) First Offenders - an act which provides categories for parole eligibility, it states: (Never before incarcerated in an Adult Correctional Facility will serve One Third (1/3), Effective 4-1-77). Arkansas Code Annotated §§ 16-93-602-604 Felones committed between April 1, 1977, and April 1, 1983 -- Parole Eligibility section (c): (Any person under Twenty One (21) years of age who is first convicted of a felony, and committed to the First Offender penal institution, or the Department of Correction for a term of years is eligible for parole at any time, unless a minimum time to be served is imposed consisting of not more than One Third (1/3) of the total time sentenced. In the event the individual is sentenced to a minimum time to be served, he or she is eligible for release on parole after serving the minimum time prescribed, with credit for good-time allowance, and for commutation by the exercise of executive clemency.)

Petitioner Pennington has been denied his Forfeited Good-Time back in full, and all his Meritorious Good-Time has not been given to him.

Petitioner Pennington is currently listed with a Parole Eligibility Date of March 3, 2000, and a Discharge Date of May 1, 2024, these dates are incorrect.

On April 11, 2016, Petitioner Pennington received a Time Reduction to Seventy (70) years with good-time allowance to be Minimum Flat Discharged. This made Petitioner Pennington

eligible for Parole after Fourteen (14) years, October 23, 1991, and causes a Minimum Discharge Date of October 23, 2012.

The Arkansas Department of Corrections has retroactively applied Act 534 -536 of 1993, and Administrative Directive 15-15 (2015), thus denying Petitioner Pennington his earned Meritorious Good-Time. This is in violation of Article 2, section 17 of the Arkansas State Constitution Bill of Attainder ex post facto prohibition, and Article 1, section 9 and 10 Bill of Attainder ex post facto prohibition of the United States Constitution.

Petitioner Pennington has received two, two-year denials of parole. The Arkansas Parole Board is retroactively applying Arkansas Code Annotated 16-93-615 in violation of Article 2, section 17 of the Arkansas State Constitution Bill of Attainder ex post facto prohibition, and Article 1, section 9, and 10 Bill of Attainder ex post facto prohibition of the United States Constitution.

The Arkansas Supreme Court has issued in Ruiz v. Felts, that hold no Bill of Attainder ex post facto laws can make one serve a more strict sentence than allowed for when the crimes were committed.

Arkansas Code Annotated § 25-15- 212(a) provides for judicial Review of any Arkansas Department of Corrections activity that raises a Federal or State Constitutional question. (see Clinton v. Bonds). Therefore this court has legal jurisdiction.

A person is not wholly stripped of the protection of the United States constitution (see Price v. Johnson)

A prisoner retains rights of access to the Courts (see Younger v. Gilmore)

A prisoner may claim the due Process Clause (see Hines v. Kerner)

A person's Liberty interest is protected by the Due Process Clause.(see Dent v. West Virginia)



### **Reason for Granting the Writ**

Petitioner Pennington's right to a Juvenile Transfer Hearing was denied, and he was tried in a Court without jurisdiction, and because Jurisdictional Issues can be brought up for the first time in Appeal, Petitioner Pennington has Right to file a Rule 37, Ineffective Counsel.

Since Petitioner Pennington has received new exculpatory evidence, and his Re-sentencing has wiped clean the slate of Post Conviction Remedies, Petitioner Pennington has a Right to file a Habeas Corpus Petition.

The Lower Courts have denied Petitioner Pennington his access to these remedies.

Because of the Lower Courts denial of Petitioner Pennington's Rights, Petitioner Pennington asks that this Writ be granted, and the Lower Courts instructed, allow Petitioner Pennington to file for his Constitutionally guaranteed Post Conviction Remedies.

The Arkansas Department of Corrections, in violation of Law, has retroactively applied Laws, and Administrative Directives, which have caused Petitioner Pennington to serve more time than the Law requires, and this Writ is necessary to correct this injustice.



## CONCLUSION

Petitioner Pennington is Actually Innocent of the Aggravated Robbery, and Capital felony Murder/ Reduced to First Degree Murder, and he is suffering a fundamental Miscarriage of Justice.

Jurisdiction was never transfered to the Circuit Court to charge, or prosecute, convict, or sentence a sixteen (16) year old minor, and his conviction, and sentence is facially invalid in violation of A.C.A. 45-413(1977), Title 47 Juvenile Statute, and the 4th, 5th, 6th, 8th and 14th, amendments of the United States Constitution.

In 1977, Exculpatory Evidence was withheld from Petitioner Pennington, making it impossible to make an informed decision. Petitioner Pennington would have chosen to go to trial had the evidence not been withheld.

Because the retroactive application of laws, and Administrative Directives, Petitioner Pennington has been refused his Good-Time, causing him to be imprisoned longer than the Law required.

The petition for a Writ of Certiorari is necessary, to correct these injustices, and should therefore be granted.

Respectfully submitted,

Frederick Pennington, Jr.

Date: May 21, 2020