NO:_____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

CHESTER BROWN,- PETITIONER

VS.

DARREL VANNOY, WARDEN- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT, NO: 19-30485, BEFORE SMITH,
COSTA, AND HO, CIRCUIT JUDGES, DENIAL OF PETITIONER'S
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA,
NO: 2:19- CV-9121

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted

Chester Brown

Chester Brown #97411
General Delviery
Louisiana State Penitentiary
Angola, Louisiana, 70712

QUESTION PRESENTED

DID THE LOWER COURT ERROR WHEN IT DENIED PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY ?

LIST OF PARTIES

All parties appear on the cover of this petition. Petitioner know of no other party interest in theses criminal proceedings except the respondent listed on the cover page of this petition.

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IN THE

SUPREME OF THE UNITED STATES

PETITION 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The opinion of the United States court of appeals appears at Appendix__B___ to the petition and is unpublished.

The opinion of the United States district court appears at Appendix___A__ to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was April 8, 2020. Therefore, the jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (a),

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

As noted in the original Application for Writ of Habeas Corpus that was filed in the United States District Court for the Eastern District of Louisiana, the procedural history in this case is extremely convoluted. However, petitioner will do his best to described the circumstances which form the bases for filing these proceedings.

On September 18, 2009, petitioner filed an application for post-conviction relief[1] in the Criminal District Court, Section A, Judge Laurie White presiding. Between September 18th 2009, and December 28, 2010, petitioner wrote a number of letters asking for a status check on the pending post-conviction relief application and filed a Motion for Status Information and/ or ruling on the application for post- conviction relief[2] However, petitioner did not received an answer from any of his letter of inquires or motion that were filed.

Thereafter, petitioner sought Writ of Supervisory from the Court of Appeal, Fourth Circuit, State of Louisiana, asking that court to intervene in this matter by ordering respondent to rule on the pending application for post-conviction relief. On December 28, 2010, the Fourth Circuit Court of Appeal for the State of Louisiana granted Supervisory for the sole purpose of transferring petitioner's application for post-conviction relief to the State District Court with orders to rule on the pending application and petitioner's request for evidentiary hearing.[3]

1 See copy of post-conviction application attached hereto
2 See copy of motion attached hereto
3 See copy of ruling

On January 31, 2011, the trial court order the District Attorney's Office to file any procedural objections they may have, or answer on the merits pursuant to Louisiana Code of Criminal Procedural Article 927. The court also ordered petitioner to appear via video link in this Court on March 1, 2011 at 10:00 am for the appointment of counsel and to apprise petitioner of the developments in petitioner's case. On March 11, 2011, the hearing was held and the court reschedule the matter for a hearing and appointment of counsel. This hearing was never held.

On March 26, 2012, petitioner wrote a letter of inquiry to the trial court asking for information concerning the status of his case. In response to the letter of inquiry, the court informed petitioner it was still reviewing the extensive information in this case. Petitioner did not received any further information concerning his case until February 26, 2015, when the trial court issue an order for petitioner to supplement his application with the sworn affidavit of Henry McCoy on or before March 27, 2015. On March 6, 2015, petitioner submitted the supplemental application with the sworn affidavit of Henry McCoy.[4]

A lengthy delayed occurred between petitioner furnishing the sworn affidavit and the court's ruling because the trial court's record was stored off sit and the affidavit that was received from petitioner was filed in the trial court's separate file under this docket number. On May 23, 2017, petitioner wrote another letter of inquiry to the trial court requesting a status check on his application for post-conviction. After receiving this

4 See affidavit attach

conviction relief. The Magistrate gave a report and recommendation that the Application for Writ of Habeas Corpus be denied with prejudice and the Motion to Stay and abey this proceedings be denied[9]. On or about May 28, 2019 petitioner objected to the Magistrate's report and recommendation[10].

On June 6th, 2019, the District Court judge adopted the Magistrate's Report and Recommendation and denied petitioner's request for stay and that his federal application for habeas relief be dismissed with prejudice. The District Court also denied a certificate of appealability.

Petitioner then filed a Motion for Certificate of Appealability in the United States Court of Appeal for the Fifth Circuit. On April 8th, 2020, the Circuit Court denied petitioner's motion[11]. On April 30, 2020, the Clerk of Court for the United States Court of Appeals, Fifth Circuit, send a letter of notification to Ms. Carol L. Michel, informing her of the Court's decision to denied petitioner relief. Therefore, this Petition for Writ of Certiorari is being present to this Court for consideration.

9 See copy of magistrate's report attached hereto
10 See objection attach hereto
11 See court's ruling attached hereto

REASON FOR GRANTING PETITION

1: CIRCUIT COURT ERRED IN DENYING MOTION TO STAY:

The reasoning for granting petitioner Motion to Stay in this case is found in the State Court's proceeding which began On September 18, 2009, petitioner filed pro SE an Application for Post- Conviction Relief based on the sworn affidavit of Henry McCoy, which is dated May 14, 2009.[1] The State trial court ordered the State of Louisiana to respond, and on February 25, 2011, the State filed procedural objections, contending the application should be dismissed because it is repetitive and untimely pursuant to La. C. Cr. P. art. 930.8 and 930.4 of the Louisiana Code of Criminal Procedural. Petitioner responded with an opposition to the State's procedural objections, arguing the applicability of the newly discover facts exception. *See* La. C. Cr. P. art. 930.8 (A)(1). On February 26, 2015, the trial Court ordered petitioner to supplement his application with the actual affidavit of Henry McCoy on or before March 27, 2015, as it was not submitted with the application for post-conviction-relief although referred to by petitioner. Petitioner did furnish the affidavit to this Court on March 12, 2015, which was within the time frame as ordered by the trial court to supplement petitioner's filing.

A lengthy delay occurred between the time petitioner furnish the sworn affidavit and the ruling of the trial court because the Court's record is stored off-site and the affidavit that was received from petitioner was filed in the Court's separate file under this matter. Fortunately, petitioner sent a letter on May 23, 2017, requesting a status

1 See ruling attached herto

check of on his application, that is when the delay and oversight was discovered and ruled upon. On July 24, 2017, trial court denied the State of Louisiana's Procedural Objections and ordered the State to answer the merits of Petitioner's Application for Post- Conviction- Relief within 30 days of the Court's order, or by August 25, 2017. The Court noted after the State address the merits of petitioner's application, the court will consider whether an evidentiary hearing will be necessary.

On August 17, 2017, the State filed a Motion to Vacate Portion of the July 24, 2017, judgment and stay the proceedings pending the State's Writ Application to Louisiana's Fourth Circuit Court of Appeal. On September 18th, 2017, the Louisiana's Fourth Circuit Court of Appeal denied the States Application for Supervisory Review.[2]

On October 10th, 2017, Applicant filed an Application for Writ of Certiorari to Review the ruling of the Louisiana Fourth Circuit Court of Appeal, and the Criminal District Court for the Parish of Orleans. On February 18, 2019, in a 4-3 decision, the Louisiana Supreme Court granted the State's Writ which Vacated the trial court's order to address the merits of petitioner's claim and allowed the State to file procedural objections to the application for post-conviction relief. At the time of this filing, the trial court had not order the State to filed it's procedural objection nor has any further action was taken by the State of Louisiana in this matter.

Because of the number of delays in this case, and the State filing a motion to stay

2 See ruling attached hereto

this case. The State motion to stay these proceedings only address the portion of the trial court's ruling which found petitioner's application timely and ask that it be allow to filed procedural objections in this case. As noted, Louisiana's Fourth Circuit Court of Appeal agree with the trial court by denying the State's Application for Supervisory review. However, the Louisiana Supreme Court granted the State' writs. However, no procedural objection has been filed by the State to the trial court nor has petitioner been able to secure any ruling from the trial court either denying the Application for Post-Conviction Relief or granting an evidentiary hearing to settle the disputed facts that the affidavit given to petitioner by the only person who connected him to this crime was sufficient to warrant a new trial. Because no action had been taken by the State courts, petitioner case was in a gray area which could have cause him to be procedurally bar from seeking federal relief. Therefore, out of abundance of caution, petitioner filed a protective application for Writ of Habeas Corpus to the United States District Court, Eastern District of Louisiana asking the court to Stay proceedings due to the failure of the State Courts to properly address this matter. Procedurally, no State Court has properly denied petitioner's Application for Post-Conviction Relief either on the merits of the case or found the matter to be procedurally bar. However, because of the number of delays that occurred in this case, petitioner could not be sure that his time for seeking relief from the Federal Courts had been tolled. Therefore, the Lower Courts should have granted the Motion to Stay these proceedings and order the State of Louisiana to render

a ruling on petitioner's application for post-conviction relief.

II.

THE COURT OF APPEALS ERRED WHEN IT DENIED COA IN THIS CASE:

LEGAL STANDARD FOR ISSUANCE OF COA:

This Honorable Court's decision in ***Miller- El v. Cockrell, 537 U. S. 322, 123 S. Ct. 1029 (2003),*** clarified the standards for issuance of a COA:

..... A prisoner seeking a COA need only demonstrate a " substantial showing of the denial of constitutional right". A petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the district court's resolution of this constitutional claims or the jurist could conclude the issues presented are adequate to deserve encouragement to proceed further. Id , 123 S, Ct, at 1034, citing ***Slack v. McDaniel, 529 U. S. 473, 484 (2000).*** Reduced to it's essentials, the test is met where the petitioner makes a showing that the "petition should have been resolved in a different manner or that the issue presented were 'adequate to deserve encouragement to proceed further." Id, at 1039, citing ***Barefoot v. Estelle, 463 U. S. 880 (1983).*** This means that the petitioner does not have to prove that the district court was necessarily " wrong" just that it's resolution of the constitutional claim is debatable."

This court do not require petitioner to prove, before the issuance of a COA that some jurist would grant the petition of habeas corpus. Indeed, a claim can be datable

even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As this court stated in ***Slack,*** "where the lower courts has rejected the constitutional claims on the merits, the showing required to satisfy Section 2253 (c) is straightforward: The petitioner must demonstrate that reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong.

In this case, the issue on which petitioner seeks a COA are at debatable among jurist of reason. Accordingly, we will discussed the issue that forms the bases for these proceedings.

REASON FOR ISSUANCE OF COA

This proceeding is based on newly discovered evidence in a sworn affidavit signed by the State's trial witness Henry McCoy. The affidavit informed the court that petitioner was not involved in the crime for which he was convicted, as he was picked up by the actual perpetrators after the commission of the crime and therefore, petitioner knew nothing of the crime, The affidavit also implicates another name person, Bobby Tennessee, as the third perpetrator along with Edward Williams and Larry McCoy, Henry McCoy, the brother of Larry McCoy, appeared as the State's star witness at petitioner's trial and testified that he previously lied to the grand jury, that he had changed his story to the police multiple times, and that his story change after the police had beaten him. McCoy's affidavit contains information that is different from his trial

testimony and is of an exculpatory nature while also implicating Bobby Tennessee, the newly named perpetrator.

The significance of this Bobby Tennessee individual became relevant because petitioner attached to his State Post- Conviction – Relief to his State Post- Conviction-Relief (PCR) application s single page extracted from what appears to be a NOPD police report from Item No. G-22017-78 that states:

> "Sixth Officers Kerry Granderson & V. Gavin apprehended... Bobby Tennessee... walking at the intersection of Adele and St, Thomas (sic) and return him to the scene of the robbery/murder (sic) where he was identified by the Thomas, A and son. Tennessee was transported to the homicide officer where the necessary paper work was dome and transported to central lock-up.

Petitioner asserts that this portion of the NOPD police report would corroborate Henry McCoy's sworn statement and is further the basis for his application to be considered timely as newly discovered.

Clearly, the facts recited in McCoy's sworn affidavit constitute " new, material, noncumulative and conclusive evidence, which meets an extraordinarily high standard, and which undermine(s) the prosecution's entire case.

In denying petitioner motion for COA, the circuit court stated: " In his motion for COA, Brown argues that the district court erred in dismissing his claim that he has new evidence consisting of an affidavit from one of his original accusers now stating that Brown did not take part in the crimes, which shows he is actually innocent." The circuit court further stated:" " To obtain a COA, Brown must make a substantial showing of the

denial of constitutional right. ***See 28 U. S. C. Section 2253 (c)(2).*** Brown " satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further". ***Miller- El v. Cockrell, 537 U. S. 322, 327 (2003). 537 U. S. 322, 327 (2003).*** However, a freestanding claim of actual innocence does not state an independently cognizable ground for Section 2254 relief. ***See Kinsel v. Cain*, 647 F. 3d 265, 270 n. 20 (5th Cir. 2011).** Brown does not raise any other claim of constitutional error. Therefore, he has not shown that reasonable jurists would debate the district court's resolution of his constitutional claims...."

The application for post-conviction relief that was filed in state trial court and the application for Habeas Corpus is predicated on newly discover evidence contain in an affidavit that was given to petitioner by Henry McCoy, who was the State's only witness or evidence that implicated petitioner in committing this offense.

Petitioner did not present his application for post-conviction relief in the state court, nor application for Writ of Habeas Corpus in this Honorable Court on a claim of actual innocence. The claim presented in the courts are predicated on newly discover evidence when viewed in it's entirety proves petitioner is actually innocent of the committing this crime. More importantly, a court's assumptions about the validity of the proceedings that result in a conviction are fundamentally different in petitioner's case

than in ***Herrera v. Collins, 506 U. S. 390, 400 (1993).*** In ***Herrera,*** petitioner's claim was evaluated on the assumption that the trial that resulted in his conviction had been error free. In such a case, when a petitioner has been "tried before a jury of his peers, with the full panoply of protections that our Constitution affords criminal defendants." ***506 U.S., at 419, 113 S. Ct., at 870 (O' Connor, J., concurring),*** it is appropriate to apply an extraordinarily high' " standard of review, . id., at 426, 113 S. Ct. at 874.

In this case, petitioner, in contrast, presents new discover evidence that demonstrated petitioner is actual innocent of the crime charge. The newly discover evidence present evidence so strong that a court cannot have confidence in the outcome of petitioner's trial. Consequently, petitioner's claim is not predicated on actual innocent in order to pass through the gateway to argue the merits of his new discover evidence claim. The standard that must be applied here is rather a miscarriage of justice has occurred. According to Louisiana Code of Criminal Procedure Article 930.8 (A)(1), petitioner filed an application for post-conviction relief predicated on the newly discover evidence within the two year time period allow to present newly discover evidence to the court for consideration; therefore, petitioner's application for post-conviction relief was timely filed. Because this matter is predicated on newly discover evidence, petitioner's evidence of innocence need carry less of a burden. In ***Herrera*** (on the assumption that petitioner's claim was, in principle, legally well founded), the evidence of innocence would have had to be strong enough to make his execution

"constitutionally intolerable" even if his conviction was the product of a fair trial. For petitioner, the evidence must establish sufficient doubt about his guilt to justify the conclusion that his execution would be a miscarriage of justice unless his conviction was the product of a fair trial.

Clearly, petitioner's claim of newly discover evidence prove petitioner is actual innocence of the crime charge, which is a totally different standard from petitioner presenting a claim of actual innocence in an attempt to pass through the gateway and argue the merits of his underlying claims. After considering the merits of petitioner's newly discover evidence claim, it is proven that petitioner is not only innocence of committing these offense, but also, a fundamentally miscarriage of justice has occurred which required petitioner to be given a new trial which is the correct standard to applied to the situation found here.

The situation found here is unlike the situation the court address ***In re Troy Anthony Davis, 130 S, Ct, 1, 557,*** and ***Tharpe v. Sellers, 138 S. Ct. 545 (U. S. 2018), where*** the circuit court was able to make a determination of whether the state courts violate clearly established federal law or an unreasonable application of federal law because the only ruling render by the state court was the ruling of the state trial judge which only ordered the state prosecution to address the merits of the case. At no time has the state courts made any ruling that would enable any Federal Courts to apply the correct standard to these proceedings. As noted, the only ruling that could be consider

by any court is the ruling of the trial court stating:..... "If true, the facts recited in McCoy's sworn affidavit constitute " new, material, noncumulative and conclusive evidence, which meets an extraordinarily high standard, which undermines the prosecution's entire case." Thereafter, the state trial court rule petitioner's application as timely filed, having met an exception under article 930.8 of Louisiana Code of Criminal Procedural. The trial court then ordered the state to answer the merits of the case, and thereafter, it would determine if an evidentiary hearing is require. Therefore, according to the findings of the trial court, petitioner posses new evidence that conclusively and definitively proving, beyond any scintilla doubt that he is an innocent man.

The standard for issuing a COA is set forth in 28 U. S.C. Section 2253 which provides that a COA may issue " only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U. S. C., Section 2253 (c)(2). This COURT NOTED IN ***Buck v. Davis, 580 U. S. 137 S. Ct. 759, 197 L. Ed. 2D 1 (2017)***. In Buck, this court noted that under Section 2263 (c)(2) the threshold and only question at the COA stage " is whether the application has shown that ' jurist of reason could disagree with the district court's resolution of constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. 580 U. S. at--- 137 S. Ct. at 773 (quoting ***Miller- El v. Cockrell 637 U. S. 322, 327, 123 S, Ct***, 1029, 1034, 154 L. Ed. 2D 931 (2003). However, because of the improper manner in which the state courts have conducted this entire proceedings, the Federal lower courts

could not apply the correct standards to this case. Accordingly, because of the unusual circumstances of this case, this matter should be reverse and remanded back to the state courts to make proper ruling on this matter which would then allow the Federal Courts to apply the correct legal standard to this case if the state court does not grant petitioner relief.

CONCLUSION

Wherefore, petitioner pray this Honorable Court reverse the United States Court of Appeals, for the Fifth Circuit ruling and remand this matter back to the state trial court to hold an evidentiary hearing to make a factual determination of the newly discover evidence that demonstrate petitioner is innocent of this crime.

Respectfully submitted

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