No.

In The

Supreme Court of the United States

JESSIE E. SHELTON,

Petitioner,

v.

ROBERT C. TANNER, WARDEN
B.B. RAYBURN CORRECTIONAL CENTER,

Respondent,

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT J. STAMPS
Counsel of Record
Bar # 12393
Supreme Court Bar #74308
1226 Antonine St.
New Orleans, LA 70115
(504)453-4323
bs33pdo@yahoo.com

QUESTION PRESENTED

Whether a pro se filing by petitioner in 2012 to the District Court, alleging ineffective assistance of counsel and an invalid plea would deny a second filing by the petitioner, by counsel; Alleging prosecutorial mis-conduct in the allotment procedure, filing the matter in the improper jurisdiction and wonton ineffective assistance of counsel and denial of a full hearing on these allegations in the 22nd District Court, St. Tammany Parish, Louisiana. In contradiction of due process under the 5th and 6th Amendments applicable to the States under the "Due Process" clause of the 13th and 14th Amendments.

PARTIES TO THE PROCEEDING AND RELATED CASES

All parties appear in the caption of the case on the cover page.

- *Jessie Shelton v State of Louisiana,* No. 487906, 22nd Judicial District Parish of St. Tammany, State of Louisiana. Judgement entered August 29, 2012.

- *Jessie Shelton v Robert Tanner, Warden Rayburn Correctional Center,* No. 487906 22nd Judicial District Parish of St. Tammany State of Louisiana. Judgement entered Apr. 28, 2017.

- *State of Louisiana v Jessie Shelton,* No. 2017 KW 0749, State of Louisiana Court of Appeal, First Circuit. Judgement entered July 25, 2017.

- *State of Louisiana v Jessie Shelton*, No. N 2017-KP-1389, Supreme Court of Louisiana. Judgement entered Dec. 17, 2018

- *Jessie Shelton v Robert Tanner, Warden, Rayburn Correctional Center,* No. 19-470, United States District Court Eastern District of Louisiana. Judgement entered August 2, 2019.

- *Jessie Shelton v Robert Tanner, Warden, Rayburn Correctional Center,* No. 19-470, United States District Court Eastern District of Louisiana. Judgement entered June 12, 2019.

- *Jessie Shelton v Robert Tanner, Warden, Rayburn Correctional Center,* No. 19-470, United States District Court Eastern District of Louisiana. Judgement entered August 2, 2019.

- *Jessie Shelton v Robert Tanner, Warden, Rayburn Correctional Center,* No. 19-30664 United States Court of Appeal for the Fifth Circuit. Judgement entered June 30, 2020.

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STATEMENT OF THE CASE

In *Banister v Davis*, *Texas Department of Criminal Justice* 590 U.S. _____ (2020) decided June 1, 2020, Justice Kagan joined by C.J. Roberts, Ginsburg, Breyer, Sotomayer, Gorsuch, and Kavanaugh held that a state prisoner is entitled to "one fair" opportunity to seek Federal Habeus relief from his conviction. This petition by Jessie Shelton is the one fair opportunity to seek relief U.S.C. 2244(b). The first Pro Se filing Shelton did in 2012 was directed to Division "D". Division "D" was the prosecutorial acquired division. The request filed in late 2016 by defense counsel on the allegation of prosecutorial misconduct in the allotment procedure, the filing and proceeding in the improper jurisdiction and ineffective assistance of counsel was the 2016 post-conviction relief. Jessie Shelton never received any proper hearing on the allegations and necessitated this Writ.

Judge Kurt D. Engelhardt, United States Court of Appeal Fifth Circuit, in his ruling of June 30, 2020 states that "No jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right and jurists of reason would find it debatable whether the District Court was correct in its "procedural ruling".

That procedural ruling did not allow a hearing in that District Court on the allegation of lack of jurisdiction of the Court to act, due process violation in the allotment proceeding, intentional prosecutorial mis-conduct and wonton ineffective assistance of counsel. The due process violation in the allotment procedure and the intentional prosecutorial mis-conduct on proceeding in improper jurisdiction never received a hearing.

The Ad-hoc Judge Fendelson 22nd Judicial District Court, a law school classmate, did an alleged hearing on

the issues raised but denied a full hearing and forced supervisory writs to the appellate courts in Louisiana. First Circuit court of appeals, Certiorari to Louisiana Supreme Court, the Federal District Court, and the 5th Circuit Court of Appeals. Interestingly aside at this time, the elected District of Attorney in St. Tammany Parish was removed by a Federal conviction and sentenced to the Federal penitentiary.

Judge Englehardt, 5th Circuit Court of Appeal in his denial of appealability contended "no reasonable jurist would allow an appeal on these proceedings". He assumes that prosecutorial mis-conduct in the allotment procedure to acquire the judge they wanted, and the filing in the improper jurisdiction is not prosecutorial mis-conduct. Also, the wanton negligence of the paid lawyers who were not legally aware of the allotment action and the failure to prosecute in the proper jurisdiction.

Under Article 927[1] of the Code of Criminal Procedure the State, has never filed any procedural objections within 30 days. No objections and no responses from the State concerning the second post-conviction in 2016 by legal counsel.

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[1] Art. 927 Procedural objections: answer

A. If an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, through the district attorney in the parish in which the defendant was convicted, to file procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days. If procedural objections are timely filed, no answer on the merits of the claim may be ordered until such objections have been considered and rulings thereon have become final.

B. In any order of the court requiring a response by the district attorney pursuant to this Article, the petitioner to relief, and shall order a response only as to such claim or claims which, if established as alleged, would entitle the petitioner to relief.

C. If the court orders an answer filed, the court need not order production of the petitioner except as provided in Article 930. Added by Acts 1980, No. 429 1, eff. Jan. 1, 1981.

Considering Judge Englehardt finding that no jurist of reason would find that these two allegations of prosecutorial mis-conduct would not rise to the level of requiring a hearing and response to those allegations is irrational.

The three District Attorneys who were involved in the episodes are no longer employed in St. Tammany Parish and Washington Parish.

The District Attorney has never procedurally or on written objections filed a response. The only response by the court through Judge Fendalson was on the motion to return to the original docket in Division I. There was never a hearing on the procedural and prosecutorial mis-conduct by the District Attorney's office. This was the District Attorney's office in which the elected District Attorney was sentenced to Federal Penitentiary for mis-conduct.

There has never been a hearing on the allegations in post-conviction relief the Defendant filed Pro Se in 2012; his allegations were ineffective assistance of counsel and non-voluntary plea. According to *Boykin v Alabama* 395 U.S. 238 (1969) and *Alford v North Carolina* 400 U.S. 25 (1970) the Division D Judge was correct in denying his post-conviction relief. However, the correct Division was Division I.

This writer is aware of that because he had a similar case in the United States Supreme Court for Harlin Glen Lay, dealing with a nolo contendere plea. This writer was contacted by the Attorney General of Florida and requested to withdraw his Writs and "We, Florida", will give immediate Parole. This they did. This writer is constantly aware that the 1st Pro Se post-conviction relief Shelton filed was properly denied. However, the 2nd post-conviction involved (2) allegations of prosecutorial misconduct and ineffective assistance of counsel. The private counsel was not aware of the procedural mis-conduct that is wonton ineffective assistance of counsel.

The second post-conviction relief concerned the (3) errors, (2) prosecutorial mis-conduct, (1) ineffective assistance of counsel.

Shelton was charged with aggravated incest R.S. 14:78.1 and arrested between Jan. 1, 2010 and Jan. 10, 2010. Arrests between Jan.1 through Jan 10, 2010 were allotted to Division I. Record reflects that on Jan. 8, 2010, the aggravated incest bill was allotted to Div. I. Later, on March 16, 2010, Jessie Shelton was additionally charged with aggravated rape, on an alleged different victim. There was no indictment for aggravated rape.

This was confused by Judge Fendalson in that the defense was attempting to recuse Division "D". This was not true. Defense argued that Division "D" should have never been involved in the Shelton matter. The new charge was a fraudulent attempt to move the matter from Division "I" to Division "D". As it turned out the Count 2 was dismissed thereby proving that the aggravated incest should have remained in Division "I".

Aggravated rape requires an indictment by a grand jury. That proceeding number was 75-51679. Since there was no indictment the petitioner was then charged with oral sexual battery R.S. 14:43.3. According to the allotment rules of the Supreme Court Rule 14.1.[2]

According to the rule of the Supreme Court the oral sexual battery charge should have allotted to Div. I. There was no indictment so therefore no special allotment.

In Div. D the count two in the proceeding he was represented by a public defender. Count one was represented by private counsel. Counsel on count two filed a motion to quash which was granted. Private

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[2] Allotment-Defendant with more than one felony case:
(a)Unless or differed method is set forth in appendix 14.1. If defendant has a felony case pending and previously allotted, any new felony arrest for the defendant shall be allotted to the division in which the pending felony was allotted. Exsequor.

counsel on count one did not file a motion to transfer to Div. I. Petitioner contends there was ineffective assistance of counsel and also prosecutorial misconduct in this regard. That was a fraudulent use of the charge that did not exist in 1983. The court had to grant the motion to dismiss.

The petitioner was charged with aggravated incest from Sept. 2003 through June 30, 2007. Petitioner alleges that any crimes allegedly committed between Sept. 01, 2003 through Sept. 2004 would have occurred in Bogalusa, Washington Parish. St. Tammany Parish did not have jurisdiction over those crimes if they existed. The state intentionally included Sept. 01, 2003 through Sept. 2004 because in 2003 the victim would have been 14 years of age. If these crimes existed they should have been prosecuted in Washington Parish.

Petitioner re-urges the ineffective assistance of counsel because private counsel did not raise this issue. Petitioner re-urges prosecutorial misconduct because the State knew or should have known. Their actions were fraudulent.

These two issues are due process issues. Petitioner's due process rights were violated necessitating a new trial and overturn of the conviction.

In the petition for Post-Conviction Relief, the petitioner argued that on an exhibit showing the allotment for the week of Jan 2010, Div. I was the proper Division. In 2010 between the dates of Jan. 1 through Jan. 10 the aggravated incest was allotted to Div. I. Any new felony charge should have followed to Div. I. The State alleged aggravated rape on a new charge but there was never a random allotment for that charge. The State alleged aggravated oral sexual battery occurred in 1983. There was no such statute in 1983. In Div. D, the public defender filed a motion to quash which was granted. There was no legal machination for Div. D to handle the aggravated incest charge other than the States desire to have Div. D handle the matter, their Judge. The private

attorneys representing the petitioner did not request the removal to Div. I, which is the proper Division to handle the matter.

This action by the state violated a recent decision by the Louisiana Supreme Court; *State vs. Nunez and Liccardi* 187 so. 3d 964. The intended manipulation by the State creates a due process violation, which makes this conviction a nullity.

The recent argument of the improper venue delineated in the petition for post-conviction, creates a nullity because of the violation of the lack of jurisdiction.

Petitioner re-urges the allegations of prosecutorial misconduct by the State; another violation of due process. Petitioner also alleges ineffective assistance of counsel.

Petitioner demands a response by the State and since more than 90 days have elapsed, post-conviction should be granted.

Petitioner alleges this matter should be returned to Div. I. Div. H, in the recusal states that a random allotment was ordered and the re-allotment was to Div. D.

Petitioner requests that this motion be filed and the State should show cause why post-conviction should not be granted; the defendant should be ordered to be present in these proceedings.

The August 5, 2010 motion to quash on the oral sexual battery was an entirely different person, which was a crime that supposedly took place in 1983. Robert J. Stamps filed the motion to quash; he was the public defender in Division D. On the he aggravated incest charge RS 14:78.1, Shelton was represented by a private attorney.

The aggravated rape charge was an attempt to remove the charge from Judge Badeaux's Division "I" to Division "D". The District Attorney had done this in another matter. See *State v. Joe Pedelahore 895 So. 2d 77.*

Shelton's private attorney plead the defendant guilty in Div. "D". His attorney did not realize that the matter should have been relocated back to Judge Badeaux's

Division "I". This was prosecutorial misconduct by the District Attorney's office, to seek the section of court that they considered to be favorable to them.

The proceeding allegations were not in the original 2012 post -conviction relief that was filed Pro Se in the District Court. The 2nd post -conviction attorney requested that the matter be returned back to the original Division "I", Judge Badeaux's Division. The defendant never received a hearing on his original allegations. Defendant was forced to file in the 1st Circuit Court of Appeal; then the Supreme Court of Louisiana, Federal District Court and then Fifth Circuit. Defendant has never received an evidentiary hearing.

Shelton's private attorney, on the RS 14.78.1 charge, did not seek reconsideration of sentence or direct appeal. His private attorney was derelict of duty. Defendant in 2012 in proper person filed a post -conviction petition on the ineffective assistance of counsel. That was denied by Division "D" of the District Court.

In 2016, through counsel Robert J. Stamps, who no longer worked for the Public Defender's office, filed a post -conviction petition alleging that the Division "D" was not the proper section; Judge Badeaux's Division "I" was the proper section. This action by the District Attorney's Office was prosecutorial misconduct and a violation of the due process clause of the 13th, 14th, 5th and 6th amendments of the United States Constitution. Prosecutorial misconduct, because the D.A.s office considered Judge Badeaux's Division "I" unfavorable and Judge Garcia's Division "D" favorable to their desires.

Private counsel who represented the defendant on Count 1, did not file to remove back to Judge Badeaux's Division. That action was ineffective assistance of counsel. The issues of ineffective assistance of counsel in conjunction with the prosecutorial misconduct of the D.A., were never raised in the post -conviction filed in 2012, in proper person by Jessie Shelton.

The Federal District Court New Orleans Magistrate Wilkinson, in his report, states that on May 10, 2010 the defendant was charged with aggravated incest and oral sexual battery on his daughter. That statement is not true. In Count 1, Defendant was charged with R.S. 14:78.1, with the victim being 14 years old. In Count 2, he was charged with oral sexual battery on another person in 1983. In Count 2, he was represented by Robert Stamps who was the Public Defender in Division D. Jessie Shelton was arrested in early 2010 on the RS 14:78.1 involving his daughter. On that he was represented by private counsel and he and counsel appeared in Judge Badeaux's Division I of Court. Later in 2010, defendant was arrested for aggravated rape on another person in 1983. In count 2, Robert J. Stamps the Public Defendant filed a motion to quash. That was granted. The District Attorney's office only filed the bogus Count 2 so that the District Attorney Joseph Obre, Julie Miramond Knight and Alonzo could remove the matter to Division D. These actions were a violation of the defendant's rights under the 5th and 6th amendment of the U.S. Constitution applicable to the State under the 13th and 14th amendments of the U.S. Constitution.

Defendant retained counsel to file motion to return the matter to the assigned Division I, Judge Badeaux's Division. If counsel did not file the recusal motion to return the matter to the original Division, counsel would be accepting what the District Attorney's office had done as correct and legal. On May 3, 2017 a hearing in Division H improperly applied the law. Jessie Shelton was never given a hearing of his post -conviction petition. Counsel was obligated to seek review of the decision of Division H Judge. The matter went to the 1st Circuit court of appeals. The Writs were denied. Writs were taken to the Louisiana Supreme Court.

Jessie Shelton did not have legal counsel after his conviction. His two private attorneys did not seek motion to reconsider sentence nor appeal. They did not do

anything for Jessie Shelton between September 30, 2010, and September 30, 2011.

Robert J. Stamps was contacted in October 2016. An application for post -conviction was filed. The only prior contact Robert Stamps had with Jessie Shelton was being the Public Defender in Division D on the Count 2 allegations in the bill of information. Robert Stamps had no contact with defendant until contacted in October 2016 to retain his services.

This counsel, Robert J. Stamps was aware of the machinations of the District Attorney's office. In a prior case handled by this counsel, the District Attorney's office wanted the Joel R. Pedelahore moved from Division G because they did not consider this the Judge they wanted. In case *State v Joe Pedelahore* 337-850, 337-851, they acquired fraudulent Grand Jury indictments. A Grand Jury indictment under the rules would require all other cases to follow the aggravated rape to Division D, their favorable Judge. After the Public Defender in cases 337-852, 334-519, 333-010, 329-016, had gone to trial with case 337-852, molestation of a juvenile and aggravated oral sexual battery. There was a conviction. Then the State through the District Attorney's office NOL PROS the two aggravated rape indictments. This would create the concept that they had only gotten the hearsay indictment to re-allot the matter from Division G to Division D.

In Jessie Shelton matter, the District Attorney's office used the same machination to remove the matter from Division I to Division D. The only difference was there was no indictment for the aggravated rape which would have allowed a new allotment under the law. There never was an aggravated rape indictment with Jessie Shelton. This counsel took no part in defendants defense on count 1. Jessie Shelton had private counsel. This writer was Public Defender representing defendant on count 2 which was Quashed.

Defense counsel at the age of 62 years old began working as public defender in Division "D" in St. Tammany and Washington Parishes. This was April 1996. In January 1997, a new Judge was elected

From that date in 1997 to the beginning of 2013, this writer worked that Division, Division "D", and was aware of the District Attorney manipulations of and preferences for that Division. This writer was aware that the District Attorneys were manipulating the docket to move the Shelton matter into Division "D". The correct docket was Division "I". Any new charges would follow into Division "I". The District Attorney had no legal authority to transfer to Division "D". This writers only action as the public defender was to quash the alleged crime in 1983, because there was no statute in the Shelton matter. This action by the District Attorney's office formed the basis of the prosecutorial mis-conduct and the allotment process. It was later determined that the crime in 2003 and 2004 should have been prosecuted in Washington Parish and not St. Tammany Parish. They are two separate Jurisdictions, they have two separate District Attorney's offices. These allegations formed the basis of the second filing for post-conviction relief. The allegations of prosecutorial misconduct in the allotment procedure, jurisdictional manipulations by the District Attorney's office, and the ineffective assistance of counsel in not being aware of these manipulations.

This writer worked in Division "D" as the public defender, and witnessed many cases where these same machinations were applied. The Joe Pedelahore case where fraudulent indictments were obtained and this public defender had to represent a very young while male (crack user), who was charged with armed robbery with a BB gun. In the armed robbery he was identified by a high school girl friend. The State demanded a plea and 30 years; two other defendants pled to 10 years. After the jury was chosen, defense counsel requested a bench conference to offer the State a plea to 20 years. The

minute clerk in that division began calling the Assistant District Attorney, Joey Obre, a "pussy" if he allowed the plea. Defense counsel knew the defendant was made. At a bench conference the next morning he offered a plea to 25 years. This was refused. They knew the jury would find him guilty. He was found guilty and sentenced by the Judge to 30 years. The District Attorney's office filed a triple bill. The defendant was sentenced to 99 years flat.

In 2011 a person from the French Parishes was indicted for anal aggravated rape of a 6-year-old boy. This matter was tried with this writer as defense counsel. The jury found the defendant not guilty. The Judge and the court were not happy. In fact, when the defendant left the stand he told the jury he was not guilty. The judge wanted to hold him in contempt.

In 2012 this writer had to defend a 19-year-old white young man. He was indicted for the murder of his girlfriend's child. The public defender hired a world class forensic pathologist (who performed the autopsy's in the 1989 crash of the Korean Airline), he cost the public defender's office $8500. His evaluation was that the child died of seizures. He so testified in the jury trial. The corner under cross examination admitted the matter was not a homicide until he was told of a confession. This public defender had requested the defendant and his family to report to the FBI the acquiring of the confession. They did not, the public defender contacted the FBI. If a citizen knows of a crime, the citizen is required to act. The defendant was convicted and sentenced to life in prison. The public defender was removed from Division "D" at the end of 2012. The chief public defender was replaced; He told this public defender you are now gone.

CONCLUSION

It is evident from this Writ the writer for Jessie Shelton was a witness to the actions of the prosecution.

Writer requests a reversal of the conviction and the ordering of a new trial.

Jessie Shelton has been incarcerated since August 2010. If this court takes no action he will be in jail until 2029. Sex offenders receive no good time. It is doubtful if he will ever receive parole.

Jessie Shelton requests that these illegal convictions be over turned and he be released.

Respectfully Submitted.

ROBERT J. STAMPS
Counsel of Record
Bar # 12393
Supreme Court Bar #74308
1226 Antonine St.
New Orleans, LA 70115
(504)453-4323
bs33pdo@yahoo.com