

IN THE SUPREME COURT  
OF THE UNITED STATES

EX PARTE	§ No. 20-5609
GARY WAYNE BARNES	§ Review of the claim of Actual
petitioner.	§ Innocence, in the interest of
BOBBY LUMPKIN, DIRECTOR.	§ Justice, as a miscarriage of
TEXAS DEPARTMENT OF CRIMINAL JUSTICE	§ Justice has allowed for the convict-
INSTITUTIONAL DIVISION	§§ ion in violation of the United
respondent.	§ States Constitution.
	§
	§

MOTION FOR REHEARING PURSUANT TO  
OR A ALTERNATIVE TO TRANSFERING THE PETITION

TO THE DISTRICT COURT UNDER RULES 20, 22, 23, and 44 and 29

To the Honorable Justices;

Now comes Gary Wayne Barnes, the petitioner and request a rehearing pursuant to the rules governing procedures on a petition for extraordinary writ; The petitioner request the court review the actual Innocences. ineffective assistance of counselor, Brady Material violations due process violationsand prosecutorial misconduct in the intentionally withholding of the evidence where the petitioner has been convicted in violation of the constitution. of theUnited States.

In justifying the granting of this Habeas application the petitioner can show that there are exceptional circumstances that warrants the exercise the court discretionary powers and that adequate relief can not be obtained in any other form or in any other court;

The petitioner filed a state writ in the Texas Court of Criminal Appeals alleging many constitutional violations supported by newly discovered evidence

that supports the claims of Actual Innocence in the presentation of evidence that was not presented at the dates of the petitioners trials.

The petitioner has shown a case of a miscarriage of Justice a case of actual innocence where in the interest of justice the petitioner requests that this court review the constitutional violations , in that the petitioner has been convicted and sentence to the sentences of life, in the cases where there is no evidence offered, presented or admitted and the victim of the alleged offense was not asked to make an identification of the petitioner.

The petitioner timely filed a State Writ of Habeas Cprpus , to which the state did not answer the allegations of the petition or make a reply to the petitioners newly discovered evidence that proves that the petitioner did not commit the crimes to which he was convicted as the newly discovered evidence is the DNA testing resulted of Feb 13, 1981, that was withheld at the date of the trials showing the results of a B profile., which excludes the petitioner.

These results was withheld at the time of the trial s.> upon a review of the records the evidence was not presented to the juror's but the evidence was intentionally withheld in violation of Brady material.

At the evidence hearing of July 24, 2019 the crime lab personal testified that the evidence has never left the crime lab and was not presented at the petitioners trials. , and there is a chain of custody of the evidence that proves that the evidence has never left the crime lab for any reason.

The evidence was not submitted to the trial court by the collection numbers for the evidence of the dates to which the offenses was committed, in the use of Collections numbers.

In the reviewing of the Writ in the state court the court will not and has not answered the petitioners Federal constitutional violations, or make a review of the records that the evidence was withheld, nevered offered, persented , or admitted.

The petitioner request that the court order the state to file a reply to the petitioners constitutional violations as it has been the petitioners efforts in the filing in the Fifth circuit court of appeals , to which has denied the petitioner the due process in the filing of a timely application without any evidence or a consideration that a default or a successive petition has been filed , or was a reply requested from the state. .

The ruling of the fifth circuit is an example, of the due process voilations, as it can not be explained if the petitioner has ever filed a writ of Habeas corpus in the State or the federal courts, without a reply from the state.

The petitioners newly filed writ in the Texas court raised the Actual Innocence and supported the writ with newly discovered testimony that has not been a consideration of the review.

The petitioner cites 28 USC § 2106 which authorizes the court to vacate as well as reverse, affirm or modify , any judgement lawfully brought before it for review. Petitioner cites 28 USC § 1651 (a) which provides that the court may issue all writs of habeas corpus necessary or appropriate in aid of its jurisdiction . See 28 USC § 2241 and 2242 (a) giving the court specific authority to issue the writ of Habeas Corpus.

The petitioners writ is to be executed , under 28 USC § 672, by the marof this court who is authorized by 28 USC § 549 when acting within the state.

The petitioner has raised and shown constitutional violations, in presenting a case of Actual Innocence that the petitioner is being illegally confined and restrained in violation of the United States Constitution as the state has not been ordered to file an answer or make a reply to the petition. .

This Court has the power to enter judgement and when necessary to enforce by an appropriate process, has been said to inherent in the courts appellate jurisdiction. *Stanley v. Schwalby*, 162 US 255, 279, 282, citing 16 S. Ct. 752.

There are exceptional circumstances as the petition has requested that the state file an answer to the petition, or in the alternative this court has the power to transfer this application to the United States District court for the northern District of Texas Dallas Division under the heading of USC 2241 and 2242.

~~This~~ This court has the power to request that the clerk of the Fifth circuit court of appeals be ordered to submit all files documents exhibits and the original petition to the office of the clerk of the US district court, Dallas Division to be filed incorporated in the petitioners 2241 application of writ of Habeas Corpus being that the state has not filed a response, that the petitioners allegations are not true, or has the allegations been refuted.

The petitioner in the following of the procedures and the rules filed in the Fifth Circuit to be granted a leave to file a petition in the District court as Dallas.

The petitioner was denied by the fifth Circuit, without a review of the issues or a review of the cases in ordering the state to submit a reply.

In the interest of Justice, a miscarriage of Justice has occurred in the conviction of a person who is actually innocence.

The petitioner requests that this court transfer this case to the District court with an order that the court file an order with the Texas Attorney General Ken Paxton to file and submitted an answer to the petitioners allegation of a constitutional maginate filed in the Texas Court of criminal appeals in the file number 12, 658- 22,23,24,and 25 as the petitioner has shown the fifth Circuit in his petition, that the state mailed the petitioner a simple white card and did not file a reply to the constitutional violations.

In the interest of justice, the petitioner request that this court transfer the petition and demand the state to file a reply;

The facts are apperant, when the petition was filed in the fifth circuit that court should have requested that the state file a reply, that court was bound by the law to question why , or to suggest a reasons as to circumstances what prevents the petitioner from filing a second petition.

Wherefore the petitioner prays that this court in a rational fudgement, stay these proceedures, and transfer these petitions to the district court and qrder that the state show cause, which would bar the petitioner from filing his claims of actual Innocence in the Court with supportive evidence and the chain of custody of the evidence that was withheld during the trials.

Respectfully Submitted

*Gary Wayne Barnes*

Gary Wayne Barnes

TDCJ-ID 318814

1100 FM 655, Ramsey

Rosharon, Texas 77583

*10/10/20*

Executed on the *10th* day of October 2020

*GWB*

UNSWORN DECLARATION

I Gary Wayne Barnes. TDCJ-ID THE petitioner in the above and forgoing Motion for a rehearing files this motion in good faith and the allegations are true and correct .

The petitioner being incarcerated in the Texas Department of Criminal Justice, Institutional Division declares that under the penalty of perjury that the above and forgoing is true and correct ;

Under Both Federal Law 28 USC § 1746 and the State Law of Texas v.t.c.a.civil Praticce and redimes code § 132,-001, 132-003 offenders incarated in the state of Texas may use an unsworn declaration.

I Gary Wayne Barnes being incarcerated at the Texas Department of criminal justice, Institutional division at the Ramsey Unit , located in Braazoria, county Texas declare that under the penalty of perjury that the above and forgoing is true and correct;

Executed on this the 10th day of October 2020

Gary Wayne Barnes  
Gary Wayne Barnes  
TDCJ-ID 318814  
1100 Fm 655, Ramsey  
Rosharon, Texas 77583

SWB  
10/10/20

In The Supreme Court  
Of The United States

Ex Parte	§	Number 20-5609
Gary Wayne Barnes ,	§	
Petitioner,	§	Pursuant to Rules 44 and 29
vs.	§	
Bobby Lumpkin, Director,	§	Service of Documents and notification
Texas Department of criminal	§	
Justice, Institutional Divisional,	§	
respondent,		

To The Honorable Justices;

Now, comes Gary Wayne Barnes, the petitioner and request that the petitioners motion of rehearing be filed in the court as required being accompanied by this Certificate stating that the grounds are limited to intervening circumstances of substantial and controlling effect or to serious constitutional violations of Actual Innocence, violations of due process, Ineffective assistance of counsel, and Brady Material violations in the discovery of newly discovered evidence that has not previously be presented, to the courts.

The petitioner in this Habeas Corpus is filing pro se in a request that he be allowed to proceed in forma pauperis, in stating that he is illegally restrained in violation of the Constitution of the United States.

The petitioner states under oath that this document is presented in good faith and not to delay the execution of the sentences, or to abuse the filing of the petition of the Habeas application , in that the petitioner has shown that there in no other avenue or a redress to a open door to which the petitioner can present the issues of Actual Innocence.



Barnes 2.

I.

The petitioner request that this court review his claim of Actual Innocence, as the petitioner has been convicted of a crime to which the victim of the crime has not identified the petitioner and the prosecution intentionally withheld the evidence. .

II.

The prosecution committed misconduct in the withholding of the actual crime scene evidence as the trial records clearly shows that the evidence was not presented, and the victim was never asked to make an identification of the petitioner.

III.

The petitioner was denied due process, as the state speaks the evidence into the records that evidence being tested in the crime lab connects the petitioner to the charged offenses, but does not present the evidence or offer the evidence, admit the evidence at the dates of the petitioners trials and the jury does not view or consider any evidence.

IV.

The petitioner was denied effective assistance of counsel in that there was no lab or scientific evidence presented of a personal to offer any evidence and said attorney made no objections to the misconduct of the prosecution instructions to the jury that evidence connected the petitioner to any offenses, as there was no evidence submitted or presented at the petitioners two trials.

V.

The petitioner is illegally restrained in violation of the constitution in that there is nothing that connects the petition to the charged offenses, and the state has convicted the petitioner in a trial that the victim has not made an identification of the petitioner.

Barnes 3

Notification and Declaration

I Gary Wayne Barnes TDCJ-ID #318814 the petitioner in the above and forgoing before the last date of filing and is accompanied by a Unsworn Statement in a declaration in the following in compliance with 28 U.S.C. § 1746 and the State of Texas V.T.C. A. civil practice and Remedies codes § 132-001, 132-003 offenders that are incarcerated in the State of Texas may use an unsworn declaration in the place of the norpty republic.

I Gary Wayne Barnes, TDCJ-In #318814 being incsrerated in the Texas Department of Criminal Justice, Institutional Division at the Ramsey unit located in Brozeria, County Texas declare that under the penalty of prejury that the above and forgoing documents are true and correct;

The petitioner states that the same docement above is mailed to The Texas Attorney General Ken Paxton at the State capitiol at P.O. Box 12348, Auntin, Texas on this the 30 Day of October 2020 by placing the same in the United Mail mostage per- paid, bying loged in the offender indiqent offender mail system .

This document is executed on this the 30, day of October 2020.

*Gary Wayne Barnes*

Gary Wayne Barnes  
TDCJ-ID 318814  
1100 FM 655, Ramsey Unit  
rosharon, Texas 77583

Executed on this the 30, th Day of October, 2020

GWB 10/30/2020