No. 20-5814

ORIGINAL

Supreme Court, U.S.
FILED
SEP 15 2020
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony Keith Webb — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals 5th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Keith Webb
(Your Name)

McConnell Unit 3001 S. Emily DR
(Address)

Beeville Tx 78102
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Was Petitioner denied the right to due process pursuant to the 14th USCA when the trial Judge refused to give the lesser included jury instruction of simple assault when the Evidence supported such request

2. was Petitioner denied the right to effective assistance of counsel pursuant to the 6th + 14th USCA when she failed to secure a medical Expert to rebut states theory and failed to introduce exculpatory Evidence to support petitioners claim of actual innocence

3. was petitioner denied the right to effective assistance of appellate counsel pursuant to 6th + 14th USCA when she failed to challenge sentence enhancement and raise claim of ineffective assistance of trial counsel failure to object to preserve issues for appellate review

4. was petitioner denied the right to due process pursuant to 14th USCA when the prosecutor withheld the internal police investigation of arresting officer from defense

5. was petitioner denied right to due process pursuant to 14th USCA based upon insufficient evidence used to convict in a state court

6. was petitioner entitled to an evidentiary hearing when different Judge ruled on merits of habeas claims didn't preside over trial and used affidavits to adjudicate claims without first hand knowledge of trial events

Table of Authorities Cited

TABLE OF AUTHORITIES CITED

OTHER

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 9th 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 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. § 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).

5. Petitioner contends that he was denied right to due process 14th USCA based upon insufficient Evidence used to convict him in a State Court proceeding and such denial is contrary to Jackson v. Virginia 443 U.S. 307, Harris v. Reed 489 U.S. 255

6. Petitioner contends that the District Court erred and abused its descretion when it denied his request for an Evidentiary hearing and applied the presumption of correctness to petitioner's motion when a different Judge presided over petitioner's trial and State habeas proceeding which denied him of a full and fair hearing, Such denial was contrary to Townsend v. Sain 372 U.S. 294, 314

These clearly established federal laws applied at the time the U.S. District Court for Western Dist of Texas (Albright, A) denied habeas relief, and U.S. Court of Appeals 5th Cir denied C.O.A. The facts in cited cases by this court are materially indestinguishable from the facts in this writ for Certiorari. Therefore any and all decisions to deny relief on all claims was contrary to clearly Established federal law. as determined by this honorable court.

STATEMENT OF THE CASE

Petitioner being unconstitutionally detained within TDCJ pursuant to a Judgment and sentence of the 19th District Court of McLennan County, Tx for assault family violence by occlusion enhanced by a prior conviction for aggravated assault, Exparte webb app. No. 88474-01, Petitioner plead not Guilty to the offense and not true to the Enhancement allegation RR vol. 4 pg 10 @ 11-14, the State moved to withdraw the enhancement RR vol. 5 pg 6 @ 6-7. A Jury found Petitioner guilty of the offense and on June 17th 2016, the court sentenced petitioner to 15 yrs TDCJ. Petitioner appealed to the 10th court of appeals for McLennan County, Tx which affirmed the trial court judgment webb v. State 10-16-00212-CR, Petitioner filed a PDR which was refused on 2-28-18 by the Tex Court Crim appeal. On 3-19-18 petitioner filed first State habeas 11.07 which was dismissed because conviction wasn't final, on 6-26-18 petitioner filed his second State habeas 11.07 with asserted claims within this petition which was denied without written order on the findings of the trial court on 9-26-18. Petitioner filed an amended federal habeas petition on Nov 26, 2018 which was denied on 5-9-19 on June 20th 2019 Petitioner filed for a C.O.A with the 5th Circuit which was denied on July 9th 2020 and final Judgment + mandate was issued on July 31st 2020 and now the following proceeding writ for Certiorari is filed due to the fact that the U.S. Court of Appeals 5th Circuit has entered a decision in conflict with relevant decisions of this Court as to call for an exercise of this Courts supervisory power.

REASONS FOR GRANTING THE PETITION

28 USC 2254 D 1+2 permits habeas relief based on claims adjudicated on the merits in State Court only when its decisions is contrary to, or involved an unreasonable application of clearly Established law Bell v. Cone 535 U.S. 685-94.

28 USC 2253 C-2 permits a district Court or Circuit Court Judge to issue a C.O.A if the petitioner has made a substantial showing of a denial of a constitutional right and shows that reasonable jurist could debate whether the petition should have been resolved in a different manner Slack v McDaniel 529 U.S. 473-84.

According to these two rules that are set in stone within the Supreme Court precedent petitioner will show that the U.S. Court of Appeal 5th cir has entered a decision in conflict with the decisions of this court on the same important matter or has so far departed from the accepted and usual course of Judicial proceeding as to call for an exercise of this courts supervisory power.

lesser included Jury instruction

Petitioner contends that he has been denied the right to due process 14th USCA when the trial court refused to give the requested lesser included jury instruction of simple assault when there was evidence to support such request. The US. District Court (Albright. A) decision to deny relief was contrary to the precedent of Keeble v. US. 412 US. 205 and the 5th circuit panel decision denial of a C.O.A, for failure to make the requisite showing that reasonable jurist would find the US. District Court decision debatable was also to the contrary and so far departed from the accepted and usual course of Judicial proceedings as to call for this court supervision power. Slack supra 529 US.@484 In a brief statement the US. district Court held that petitioner didn't raise a ground for Federal Habeas relief because such failure didn't raise a federal constitutional issue. This is contrary to Supreme Court precedent holding that states, due process of the 14th USCA requires that trial judges give lesser included offense instructions to the jury if the evidence would permit a rational jury to find him Guilty of the lesser and acquit him of the Greater Keeble v. US. 412 US.@208. and that there is a due process violation where there is some evidence to support an instruction on the lesser included offense Hopper v. Evans 456 US. 605. Roberts v. LA 428 US. 325 The Texas courts has implemented a 2 step test to determine when a charge on a lesser included offense should be given Aguilar v. State 682 SW2d 556-58 and is determined by Texas code crim proc art 37.09. It is undisputed that simple assault is the lesser included offense to Assault by occlusion which defense counsel argued on 10-6-2015 that responding officer testified that the scar on victim collarbone could've been from other conduct besides the impeding of airways. This fact should've been used to Establish regular bodily injury underlying simple assault RR vol 4 pg 98-99, the placement of the scar RR vol 7 pg 7-10 tend to disprove the testimony that petitioner impeded victim airway with his thumb and tend to prove that regular bodily injury occured instead. Being that more than a scintilla of Evidence of simple assault was presented the second prong of the test only requires that there be some Evidence from which a rational jury could acquit him of the greater while convicting him of the lesser which requires a view of all the Evidence presented at trial. Despite the lack of scientific evidence to prove the Essential element of occlusion being that there was no signs or abnormalities in the conjunctiva of her eyes, the range of motion in her neck was normal, there was no Ecchymosis or bruising to her neck, and her carotids was clear, all of this contradicts someone being choked during an attack. Gouging someone RR vol 4 pg 36 leaving a mark and causing pain are facts that would lead to a conviction of misdemeanor assault, Any evidence elicited from any witness indicating that a lesser included offense has occured is enough to require a trial judge to grant the requested instruction. A finding that petitioner was erroneously denied a jury instruction to which he was entitled to under state law is the first step in determining whether that error violated federal due process" Cupp v. Naughten 414 U.S. 141, 46. The U.S. District Court was constitutionally bound to review and apply the correct legal principles governing petitioners constitutional claim and such denial violated petitioners right to due process and any decision was contrary to clearly established federal law.

INeffective Assistance of Counsel

Petitioner contends that he was denied Effective assistance of counsel based upon cumulative errors pursuant to 6^{th} + 14^{th} USCA when counsel failed to A) secure a medical expert on behalf of defense B) failed to present exculpatory evidence to support claim of actual innocence. The U.S. District Court (Albright, A) decision to deny relief was contrary to Strickland v. Wash 466 U.S. 668 by stating that counsel decision is to be essentially strategic, and the 5^{th} circuit panel decision denial of a C.O.A for failure to make the requisite showing that a reasonable jurist would find the U.S. District Court decision debatable was also to the contrary. Counsel failure to secure a medical expert for the defense, or call to the stand as a rebuttal witness fell below an objective standard of reasonableness because she didn't educate herself sufficiently on the scientific issues to enhance her abilities to mount an effective cross examination this act alone was constitutionally deficient and deprived petitioner of a fair trial U.S. v Tofall 990 F.2d 1456 5th holds that counsel failure to seek consultation with an expert where the medical evidence is crucial was performance far below professional norms thus prejudiced petitioners trial outcome because it wasn't based on any pretrial investigation and such inadequacy of counsel investigation prevented him from offering something akin to an alibi, counsel investigation isn't reasonable within Strickland when the facts of a case supply them with notice that a particular line of pretrial investigation may substantially benefit her client and don't pursue it RR vol 6 pg 11 @ 5-6. Had counsel called DR Robert Greenberg MD, who was readily available to testify at trial and would've rebutted the prosecuter theory of occlusion and confronted the jury with facts that the victim testimony and physical evidence would've indicated

that the act of occlusion didn't happen because there was no signs or abnormalities in the conjunctiva of her eyes, no Ecchymosis or bruising around the neck and her carotids was clean, all of this contradicts someone being choked. In the same vain, Counsel failure to introduce into evidence Exculpatory Evidence @ petitioners phone records and Email which was corroborating Evidence which would've precluded conviction because it would've demonstrated his Actual innocence or raised sufficient doubt as to that Question to undermine confidence in the verdict renders deficient performance which prejudice and deprives petitioner of his Right to effective assist. of counsel Ex parte Amezquita 223 SW2d 363, 68.
It is well Established that counsel may not fail to conduct an investigation and then rely on the resulting ignorance to Excuse her failure to explore a strategy that would likely yield Exculpatory Evidence. As a result of such failures counsel let the victim testimony stand completely uncorroborated and such deficient performance undermined confidence in the result of the trial and proper functioning of the adversal process that the trial couldn't be relied on as having produced a just result

When faced with similar examples of counsel failed to introduce exculpatory evidence, the 5th circuit panel has concluded that such failure constitutes deficient performance Wesly v. Cabana 764 F.2d 1173 5th Cir. This court has been asked to determine whether counsel erred because she failed to obtain a medical expert opinion and present exculpatory evidence at trial, such issues should also be presented as to what further investigation would've shown and what professional help would've added to petitioner's asserted claim, petitioner has shown that trial counsel was ineffective in failing to secure a medical expert and introduce exculpatory evidence of petitioners cell phone & email which prejudice petitioner because a showing that additional investigation into such deficient performance would've produced evidence favorable to petitioner's defense in the primary case and tainted by constitutional error that it more likely than not that no rational jury would've convicted petitioner in the light of such evidence had petitioner been afforded an evidentiary hearing to develop the ineffective assist. of counsel claim in U.S. District Court and such denial undermined confidence in the result of the habeas corpus proceeding and the proper functioning of the adversal process that such denial can't be relied on as a just result and any decision is also to the contrary of Strickland v. Wash As counsel omitted within her sworn affidavit to the state habeas court on April 13th 2018 that she had medical journals and articles to help prepare a defense but failed to introduce this exculpatory evidence that would've aided his defense theory and also stated that she used the information from petitioners cell phone records to form cross examination Questions which was ~~perfun~~ perfunctory because she ignored her duties as an advocate to fully investigate the purportedly statement of the victim who clearly stated that she didn't want to prosecute petitioner and that it was the States decision to go ahead with the case, and that ofc carpenter had written the statement for victim to establish probable cause for arrest. Being that petitioner provided counsel with this information which cast doubt on the events as portrayed by the files of the prosecutor, counsel didn't fulfill her duties as an advocate on petitioners behalf

Eldridge v. Atkins 456 U.S. 910

Ineffective Assistance of Appellate counsel

Petitioner contends that he was denied the right to effective assistance of appellate counsel based upon cumulative errors pursuant to 6th + 14th USCA when appellate counsel failed to A) raise claim that sentence enhancement violated petitioners right to jury trial B.) failed to raise claim of ineffective assist of counsel for failure to object to preserve issues for appellate review. The U.S. District Court decision to deny relief was contrary to the precedent of Strickland v. Wash 466 U.S. 668, and the 5th circuit panel decision to deny a C.O.A for failure to make the requisite showing that a reasonable jurist would find the District Court decision debatable was also to the contrary. It is well established that when a petitioner alleges that his appellate counsel was ineffective for failing to raise a meritorious issue on appeal the merits of the claim must be examined U.S. v. Cook 45 F.3d 388 an appellate counsel usurpation of certain fundamental decisions can violate the due process 14th USCA Faretta v. Calif 422 U.S. 806 and appellate counsel failure to raise non frivolous constitutional claims upon which his client insisted must constitute cause and prejudice for any procedural default under State law Wainwright v Sykes 433 U.S. 72. Petitioner contends that the sentence enhancement by the trial judge violated his right to a fair trial 6th USCA, Grand Jury clause 5th USCA, when the state failed to produce sufficient evidence in regards to the enhancement allegation of Aggravated Assault which petitioner has never been convicted of or charged with Cunningham v. Calif 549 U.S. 270, French v Estelle 692 F.2d 1021 5th cir. After petitioner plead not true to the enhancement RR vol 4 pg 10 @ 11-14 the state moved to withdraw the enhancement RR vol 5 pg 5 @ 22-24. This act created a prejudicial varience between the allegations in the indictment and the trial courts punishment charge which violated petitioners right to due process 14th USCA because the state failed to provide fair notice to defendant of claims that it would use to enhance his sentence which surprised him and was unprepared to meet because when the state withdrew the allegation the indictment contained no enhancement allegation. Being that the district court was obligated to follow the holding of Texas Court Crim Appeal ruling Ex parte Patterson 740 Sw2d 766 holds that before a prior conviction can be used for enhancement under the felony recidivist statue they must be plead in the indictment which is consistent with clearly established federal law Spencer v. Texas 385 U.S. 554, Stirone v. U.S. 361 U.S. 217 It is well established that before appellate counsel can render effective assistance he must have a firm command of the governing laws Ex parte Welborn 785 SW2d 391 Appellate counsel ommitted within his sworn affidavit April 27th 2018 that no error Existed because trial counsel didnt object to the abandoned enhancement paragraph. Appellate counsel omission to the courts was outside the realm of professional competent assistance because, where the indictment contains no enhancement allegation appellant has no duty to object to its absence ~~[illegible]~~ Luken v. State 780 SW2d 264, 268 and that an error in the courts charge may be raised for the first time on appeal. It is a fundamental guarantee that an accused is to learn in advance of trial what he is being accused of so that he may properly prepare his defense. Because the charging instrument in this case was devoid of any enhancement provision the state failed to provide petitioner with fair notice of any enhancement allegations and such judgment by the trial court should be reversed because when an indictment has been returned, its charges may not be broadened through amendment except by the Grand jury itself Ex parte Bain 121 US. 1, Stirone v. US. 361 US. 212 which destroyed petitioners substantial right to be tried only on the charges presented in the indictment returned by the grand jury and such variance infringed his right to have the Grand Jury make the charge on its own judgment which is a substantial right which cannot be taken away with or without court amendment, however this issue doesn't call for speculation as to what the Grand Jury might have done, what it did was to indict petitioner solely for the charge of assault family violence by occlusion w/enhancement allegation of aggravated assault, when the prosecutor and trial court went beyond the Grand jurys charge, they constructively and impermissibly amended the indictment thereby denying petitioner a substantial right under the 5th USCA. In the same vein petitioner contends that appellate counsel rendered deficient performance which also deprived him of a fair appellate review when he failed to file a claim on appellate review of ineffective assistance of trial counsel for failure to object to perserve issues for appellate review which can be raised on Direct Appeal in Texas. Lockhart v. McCotter 782 F.2d 1273-83 5th cir. Being that appellate counsel failed to present this issue within his appellate brief which he omitted within his Affidavit 4-27-2018 to the habeas court deprived petitioner of a fair appellate review because it could've resulted in a reversal of conviction Lombard v Lynaugh 868 F.2d 1475 5th cir. The District court (Albright, A) should've reached the determination on these presented claims before it considered the alleged ineffective assistance of appellate counsel claim, and the 5th Circuit panel didn't give sufficient weight to petitioner's claim which would've entitled him to habeas relief

Brady / Napue violation

Petitioner contends that he has been denied the right to due process 14th U.S.C.A for purpose of Brady / Napue violation. The U.S. District Court decision that petitioner was procedurally barred from habeas relief for failure to exhaust, was contrary to its own holding that petitioner asserted this claim and that there was some indication that this claim was exhausted, and the 5th circuit panel denial of a C.O.A for failure to make the requisite showing that the district court decision was debatable among jurist of reason was also to the contrary and so far departed from the accepted and usual course of judicial proceeding because petitioner's right to due process was clearly violated when the prosecutor relied on the false testimony of officer Carpenter to go uncorrected at trial which left a false impression to the jury, while withholding from the defense the internal police investigation, arrest and conviction of the arresting officer George Neville. Such material was suppressed for purpose of a Brady / Napue violation and calls into Question Petitioner's conviction Kyles v. Whitley 514 U.S. 419, 434, it is well established that a conviction obtained through false testimony is repugnant to the constitution Mooney v Holohan 294 US. 103-12 and must fall under the 14th USCA Napue v. ILL 360 US. 264. Officer Carpenter wasn't the arresting officer on Nov 14th 2012, nor did he book petitioner into McLennan County Jail and charge him with the crime of Assault Family Violence by occlusion, such information shows that Ofc George Neville was the arresting officer. The prosecutor office has a duty to insure communication of all relevant matters on each case to every prosecuter who deals with it, and that a conviction must be set aside because the use of perjured testimony is fundamentally unfair if there is any likelihood that such testimony affected the judgment of the jury. Being that trial counsel was ineffective pursuant to the 6th + 14th USCA for failing to do any investigation into the prosecutions case and into various defense strategies and failed to request any discovery in regards to this matter because counsel mistaken belief that the state was obligated to take the initiative and turn over all of its inculpatory evidence to the defense put at risk both petitioners right to an ample opportunity to meet the case of the prosecution and the reliability of the adversarial testing process because she didn't interview the victim to access her version of the facts nor did she interview the police officers involved in the case of 2013-266-C1 Petitioner draws this court attention to McLennan County District Clerk case management which concerns

State subpoena applications for 1.) D. willis; victim #4957644, 2.) ofc G. Neville #4959013, 3.) ofc K. carpenter #4959041, no subpoena for ofc carpenter riding partner ofc chris Noble as the trial record reflects at RR vol 4 pg 55 @ 1-2, and RR vol 4 pg 58 @ 11-20 if he ofc carpenter ultimately arrested and took petitioner to McLennan County Jail he left his partner ofc Noble behind. Taken as a whole this claim should undermine confidence in the verdict and a C.O.A should have been granted because petitioner has demonstrated sufficient facts that the District Court decision was debatable among jurist.

Insufficient Evidence

Petitioner contends that he was been denied the right to due process 14th USCA for purpose of insufficient evidence used to convict within a state court proceeding. The U.S. District Court (Albright, A) decision to deny relief was based on a claim of procedural default/Bar for failure to exhaust such claim which is contrary to Picard v. Conner 404 US 270 because as the record indicate, The State Habeas Court of McLennan County, Tx (Strouther, R) recommended to the Texas Court of crim appeal that relief should be denied because a challenge of sufficiency of evidence wasn't a cognizable claim under State Habeas art 11.07 No. 2013-266-C1B Ex Parte Anthony Keith Webb and the 5th circuit panel denial of a C.O.A for failure to make the requisite showing that reasonable jurist could find the district court decision debatable was also to the contrary because the substance of petitioners claim was fairly presented to the State Highest Court and gave them an opportunity to apply the correct controlling legal principles to the facts bearing upon petitioners properly labled claim as violating his right to due process. Such claim shouldn't have been precluded from federal review and a C.O.A should've been issued because when the state habeas court rejected the claim based on collateral review stating that the claim could've been raised on direct review falls short of an explicit reliance on the procedural bar itself Harris v. Reed 484 U.S. 255 thus clearly established federal law applied at the time the U.S. District Court (Albright, A) decided Webb v Davis 6-16-cv-00270. Had appellate counsel challenged the sufficiency of evidence and renewed petitioners Motion for new trial #4966475 based on the fact that the verdict was against the weight of evidence as instructed by petitioner during his appeal there would've been a reasonable probability that petitioner would've prevailed on such claim which also makes any default excusable because of the deficient performance of appellate counsel Wainwright v. Sykes 433 U.S. 72. None the less, Sufficiency of Evidence is a cognizable claim under federal habeas review and should've been reviewed under the federal sufficiency standard of Jackson v. VA 443 U.S. 307. The Supreme court clearly established that in cases involving the sufficiency of evidence supporting a state court conviction, its concern isn't with the state court application of state law defining the offenses but rather with the state court application of federal law. Under this standard the only question is after reviewing the evidence in light most favorable to the prosecution any rational trier of fact could've found the essential elements of the crime of occlusion beyond a reasonable doubt and such review should be reviewed under a doubly deferential standard of review which 1) defer to the Jury verdict 2.) refer to the state court rejection of defendants constitutional argument which resulted in a violation of clearly established federal law. Some evidence or a mere modicum of evidence isn't sufficient to satisfy

Ecchymosis or bruising to her neck and her carotids was clean RR vol 6 pg 11 @ 5-6 all of these scientific facts contradicts the states theory of occlusion and thus failed to meet its burden of proving every element of the charged offense of occlusion beyond a reasonable doubt and being that relief was denied based on a misapplication of the procedural bar by the U.S. District Court in which a C.O.A should've been issued by the 5th Circuit panel because petitioner has demonstrated that the district court decision was debatable among jurist and stated a valid constitutional claim because the act of occlusion wasn't fully established RR vol 4 pg 100 @ 4-5 and RR vol 4 pg 121 @ 4-19

Need for an Evidentiary hearing

Petitioner has asserted within his application for habeas relief in both State and federal court that the claims presented therein had raised factual disputes that if resolved in his favor wouldve entitled him to habeas relief pursuant to 28 USC 2254 and that the state didnt afford him a full and fair hearing. The District Court abused its descretion when it denied petitioner an evidentiary hearing U.S. v. Fields 761 F3d 443 5th cir and the 5th circuit panel construed this request as a direct appeal from the denial of an Evidentiary hearing which is also to the contrary because petitioner demonstrated that the district court decision was debatable among jurist when it denied such hearing and presumed that the facts were correct in the state habeas court of McLennan County, TX being that state habeas Judge (Strother, R.) conducted only a paper hearing in the state habeas proceeding he couldn't compare the information presented within the various affidavits against his first hand knowledge of trial because he didn't preside over it on 10-6-2015 No 2013-2660-1 therefore the findings of fact in the state habeas proceeding shouldn't have been entitled to the presumption of correctness, the Supreme Court has made the law clearly Established in the precedent of Townsend v. Sain 372 U.S. 293, 314 where a petitioner shows the existances of a genuine dispute of material fact and has been denied a full and fair hearing in the state court proceeding a federal Evidentiary hearing is mandatory @ 312, As it is well established within the 5th circuit, that if the state Habeas judge wasn't the trial Judge a trial by affidavit isn't a full and fair hearing Nethery v. Collins 993 F.2d 1154, 57 5th Cir and that there is a danger of trial by affidavit Amos v. Scott 61 F.3d 333, 347 5th Cir. The district court erred and abused its discretion when it applied the presumption of correctness to petitioners motion for an Evidentiary hearing and concluded that petitioner failed to plead any allegations that would entitle him to a full and fair hearing

A.) Hon. Judge George Allen presided over trial on 10-6-2015

B.) Hon. Judge Ralph Strouthers conducted paper hearing and recommended that relief be denied 7-19-2018

C.) Hon Judge A. Albright denied Evidentiary hearing and federal Habeas relief on 5-9-2019

Thus the U.S. District Court decision to deny an Evidentiary hearing and the 5th circuit panel decision to go against its own holdings and denied a C.O.A on the requested constitutional claims so far departed from the accepted and usual course of judicial proceeding on materially indistinguishable issues as to call for an exercise of this courts supervisory power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

[signature]

Date: 15th day of September 2020