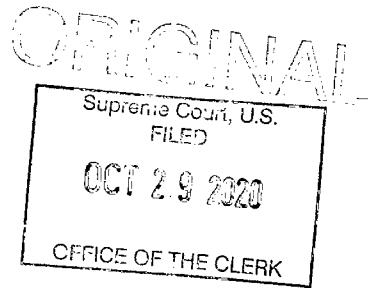


20-6308

NO. _____



IN THE
SUPREME COURT OF THE UNITED STATES

JOHN PATRICK WALLACE - PETITIONER

VS.
LORIE DAVIS - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

seeking review from court of last resort
A Judgement From The United States Court
Of Appeals
For The Fifth Circuit

JOHN P. WALLACE
Advocate & Petitioner
Of Record

MARK W. STILES PRISON
T.D.C.J. UNIT

3060 FM 3514

BEAUMONT, TEXAS 77705

QUESTIONS PRESENTED

1. Does The State Lack Subject Matter Jurisdiction Under The Fourteenth Amendment Of The United States Constitution?
2. Can The Petitioner Demonstrate ACTUAL INNOCENCE To Excuse The Procedural Bar?
3. Can The Petitioner Demonstrate Through The Fifth Circuit's Usual Practice/Precedence That Every Level Of Exhaustion Is Not Needed To Excuse The Exhaustion/Procedure Bar?
4. Has The Petitioner Made A Credible Showing To GRANT The Petitioner's Request For A certificate of Appellability?

(i)

PARTIES TO THE PROCEEDING

The Parties To The Petition For WRIT Of
CERTIORARI Is Listed As Followed:

1. The Petitioner Who Seeks Review Is JOHN
P. WALLACE

2. The Respondent In This Matter Is LORIE
DAVIS. The Executive Director Of Texas Dept. Crim. Just.

() (ii)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Respectfully Prays That The Petition
For Rehearing Issue To Review The Judgement Below.

OPINIONS BELOW

The Opinion Of The United States District Court Of
The Eastern District Sherman Texas Is Attached At
Appendix C To The Petition

As Well Unpublished

The Opinion Of The United States Court Of Appeals
For The Fifth Circuit Appears At Appendix A, B To The
Petition

As Well Unpublished

The Opinion Of The CRIMINAL COURT OF APPEALS For The
Fifth Judicial District In DALLAS, TEXAS Court Appears At
Appendix D To The Petition.

As Well Unpublished

JURISDICTION

The Motion For Reconsideration To Issue A C.O.A
Was Decided, and DENIED July 27th, 2020.

Pursuant To Supreme Court Rule 13.1. This Court
Invokes Jurisdiction Of A Judgement From The United States
Court Of Appeals For The Fifth Circuit.

The Jurisdiction Of This Court Is Invoked Under 28
U.S.C §1251(a), 28 U.S.C §2254, 28 U.S.C 2253

(~~wa~~)

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment Of The United States
Constitution

28 U.S.C §1251

28 U.S.C §2254

28 U.S.C §2253

INTRODUCTION

The Petitioner Was charged With A Burglary Of A Habitation.Pursuant To Texas Penal Code 30.02.The State Of Texas Failed To Meet The Complete Required Culpable Elements Of The Crime In Question.

The Petitioner Was Pulled Over For Various Traffic Stop.The Vehicle Was Later Searched, and discovered A Wallet/Radar Detector From The victim's House or Commission Of Offense In Question.

Texas State Law Allows A Defendant With Recent, and Unexplained Stolen Property.Permits An Inference Of Guilt. Consistent With Other Circumstances That Surround The Offense Alledged The Defendant Who Is A Burglar In Question.

The Defendant Is Entitled To The Presumption Of Innocence.Under The Texas Rules Of Evidence.A Defendant Need Not To Offer An Explanation, and The Fact That These Items Were Not In Plain View.

The Circumstance's That Surround The Defendant's Circumstance's, The Trial Court Transcript, AFFIDAVITS Of TRUTH In Fact, and The Timeframe's Provided At The Time Of Trial Will Render The Judgement Legally Insufficient.

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DOES THE COURT LACK SUBJECT MATTER JURISDICTION

1.Upon Inception All Courts Are Obligated To Satisfy Jurisdiction.Bender vs.Williamstert Area School Dist.475 U.S. 534,559,106 S.ET 1326,1339,84 L.Ed.2d 501(1986).

2.Subject Matter Jurisdiction Is A Defense That Is Never Waived or Forfeited Fed.R.Crim.Proc.12(h).A LACK OF SUBJECT MATTER JURISDICTION Is A Defense That Is Never Waived,Avoided, or Forfeited.Fed.R.Crim.Proc.12(h)(3).

3.As To The Special Issue Of jurisdiction Of A VOIDED Statute.The Lower Court's Have Failed To Brief This Very Issue. There-by Depriving The Court's Of Judicial Immunity.Downes vs. Bidwell.182 U.S.244,391(1901).

4.No Arbiter Has The Right To Decline Exercise Of Jurisdiction.Scott vs.Jones,5 How 343(1815).No Act Of Waiver.U.S. vs.Meachum,626 F.2d 503,510(5th Cir 1980).

5.Equity Jurisdiction Will Be Exercised To Enjoin The Threatened Enforcement Of A State Law Which Contrvenes The Federal Constitution Wherever It Is Essential In Order Effectively To Protect The Rights Of Person's Against Injuries Otherwise Irremiable.Watson vs.Buck,313 U.S.387,402,61 S.CT 962,85 L.Ed 1416.

6.The Validation,Invalidation Of A Texas State Statute ON ITS FACE.Dyson vs.Stein,401 U.S.200,91 S.CT 769,87 L.Ed.2d 781(1971)(remanded,reconsidered of N.Dist)

7.A Demurrer Is Called To The Court To"Cease Fighting" Until A Matter Is Adjudicated.Watts vs.U.S.,394 U.S.705,89 S.CT 1399,22 L.Ed.2d 664(1969).

8.The Use Of Ellipse Calls For The Court's Statutory Power To 'Adjudicate' The Case.Steel Co.vs.Citizens For Better Envt.,523 U.S.83,89,118S.S.CT 1003,140 L.Ed.2d 210(1998).

9.The Supreme Court Clearly States..."where specific allegations before the court show reason to believe that the petitioner may,if facts are fully developed,be able to demonstrate that he is confined illegally, and is therefore entitled to relief.it is the duty of the court to provide the necessary facilities, and procedures for an adequate inquiry.Obviously in exercising this power the court may utilize familiar procedures,as appropriate,whether these are found in civil or criminal rules or elsewhere in the usages, and principles of law.Harris vs.Nelson,394 U.S.286,300,89 S.CT 1082,22 L.Ed.2d 281(1969).

10.The Texas State Statute Code Of Construction Is Jurisdictional.Ex Parte Bain,121 U.S.1,7 S.CT 781,30 L.Ed 849(1887).

11.Which Would Require A Competent Tribune.U.S. vs.Williams, 341 U.S.58,66,71 S.CT 595,95 L.Ed 747(1951).Preclusive To A Jurisdictional Analyst.U.S. vs.Wiltberger,5 Wheat 76,105,5 L.Ed 37,45; U.S vs.Scruggs,714 F.3d 258,264(5th Cir 2013).

12.A Failure To Observe It's Own Laws or Disregard The Charter Of It's Own Existence.Mapp vs.Ohio,367 U.S.643(1961).

13. An Offer Must Be Certain, and Unambiguous. Morrow vs. Devitt, 160 S.W.2d 977, 983 (Tex-Civ.App-Amarillo 1942, writ ref'd w.o.m).

Non Assumpit To The Contents Of The Document. Arthur L. Corbin, 1 Corbin On Contracts §3.30 of 472,75 (rev ed 1993).

14. Pouring New Meaning Into The Wineskin Of Jurisdiction Clarity Would Be Facilitated If Courts, and Litigants Used The Label Jurisdictional Only For Prescription Falling Within A Courts Adjudicatory Authority. Kentrick vs. Ryan, 540 U.S. 443, 445, 124 S.Ct 906, 157 L.Ed.2d 867 (2004).

15. This Court Would Require It's Adjudicatory Process. Blackedge vs. Perry, 417 U.S. 21, 30, 94 S.Ct 2098, 40 L.Ed.2d 628 (1974).

CAN THE PETITIONER DEMONSTRATE ACTUAL
INNOCENCE

16.Pursuant To 28 U.S.C 2254(a)(c)...The Appellant May Raise Before The Supreme Court A Claim Of ACTUAL INNOCENCE On The Ground That He Is In Custody In Violation Of The Constitution,Laws,or Treaties Of The United States.Lopez vs. Smith,574 U.S.509,135 S.CT 1,6,190 L.Ed.2d 1(2014).

17.(c)An Applicant Shall Not Deemed To Exhausted The Remedies Available In The Court's Of The State,Within The Meaning Of The Section.If The Applicant Under the Law Of The State To Raise,By any Available Procedure The Question Presented.see e.g Cook vs. Foster,943 F.3d 896,904(7th Cir 2020).

18.Habeas Relief Is Also Allowed Pursuant To 28 U.S.C §2254 (B).The Facts Underlying The claim Would Be Sufficient To Establish By Clear, and Convincing Evidence That But For No Constitutional Error, and NO REASONABLE FACTFINDER WOULD HAVE FOUND THE APPLICANT GUILTY OF THE UNDERLYING OFFENSE.Brumfield vs.Cain,576 U.S.305,135 S.CT 2269,2277,192 L.Ed.2d 356(2015).

19.The Federal Court Shall Produce The State Court Record or Such Pertinent Record.Schriro vs.Landigan,550 U.S.465,474, 127 S.CT 1933,167 L.Ed.2d 836(2007).

200Habeas Relief Provided For Inmate Of Claim Neither Pleaded Nor Even Argued,By Implied Consent.As Issues Not Raise In The Pleadings Were Tried By Express or Implied Consent.
Winthrow vs.Williams,507 U.S.680,696,113 S.CT 1745,173 L.Ed.2d 407(1993).

21. Absent The Required Culpable Elements. Poe vs. Ullman, 367 U.S. 405, 81 S.Ct 1752, 6 L.Ed.2d 989.

22. The Texas State Legislative Penal Scheme Only Allows Possession With Circumstances That Surround The Situation, Permit An Inference Of Guilt. Hardesty vs. State, 656 s.w.2d 73, 77 (Tex.cr.App.1983).

23. At The Time Of Arrest. The Appellant Provided A Legal Explanation, and Thereafter The State's Prosecution Shoulder's The Burden Of Incorrectness. Doyle vs. Ohio, 426 U.S. 610, 619, 96 S.Ct 2240, 49 L.Ed.2d 91 (1976).

24. Consistent With The Certainty Needed In A Penal Law For It's Validity. The 'Probability' That The Legislature May Have Desired To Include A Species Of Activities Within An Act Is Not Enough. U.S. vs. Wiltberger, 5 Wheat 76, 105, 5 L.Ed 37, 45 (1900).

25. The State Court Transcript Record Before Us, Is Necessary To Adjudicate The Material Facts. Batchelor vs. Cain, 682 F.3d 400, 405 (5th Cir 2012).

A Materially Incomplete Record For Reason Of Comity, Finality, Federalism. Gordon vs. Buxton, 780 F.3d 196, 200 (4th Cir 2015); see also e.g U.S. vs. Townsend, 474 F.2d 209, 216 (5th Cir 1973).

26. The Appellant Will Continue To Undergo A Grave Miser-
rage Of Justice, Shall We Fail To Intertwine The Merits In Dispute. Banks vs. Dretke, 126 S.Ct 1256, 1282 (2004). The Lower Court's Are Clearly Wrong For Failure To Issue An Evidentiary Hearing or Court Transcript Record To Substantiate The Claim. Dretke at 1262(c).

27.A Factbound Issue Exist Before Us.Sup.Ct.Rule 10 T.
Bishop E.Hartnett D.Himmelfarb.That Implicate A Disputed Legal Issue.Sup.Ct.Practices5.12(c)(3)P352(10th ed 2013).see also Cash vs.Maxwell,565 U.S.132 S.Ct 611,181 L.Ed.2d 785(2012).

28.The Gateway Under SCHLUP Shall Be Opened For Evidence Old,New,Incrimatory,Exculpatory,Documentary In Fact,or Credibility Determination Deserving To The Highest Appellate Deference.Telegez vs.Zook,806 F.3d 803,810(4th Cir 2020).

IS THE PETITIONER ENTITLED TO AN EVIDENTARY
HEARING

29.A Defendant Is ENTITLED To An Evidentary Hearing If He Can Show That:1)the merit's of the factual dispute,were not resolved in the state hearing.2)the state factual determination is not fairly supported by the record as as whole.6)for any reason it appears the state trier of fact that did not afford the habeas applicant a full and fair hearing.Townsend vs.Sain, 372 U.S.293,313,83 S.CT 745,9 L.Ed.2d 770(1963).

30.The Lower Courts May Abuse Their Authority In Question For A Failure To GRANT An Evidentary Hearing or Prompt Hearing...Consistent With The Intentions Of Congress H. R 4233.

31.Similarly Situated To MR.WALLACE Chilling Effect.1) Every Law That Makes An Action Done Before The Passing Of The Law, and Innocent When Done,Criminal, and Punishes Such Action. 2)Every Law That Aggravates A Crime Or Makes It Greater Then It Was When Committed.3)Every Law That Changes The Punishment, and Inflicts Of Greater Punishment Then The Law Annexed To The Crime.4)Every Law That Alters The Legal Rules Of Evidence, and Receives Less or different Testimony.Than The Law Required At The Time Of The Commission Of The Offense In Order To Convict. Calder vs.Bull,3 U.S.386,1 S.CT 176,1 L.Ed 648(1798).

32. As To The Texas State Statute At Large. Variances, Circumstances That Surround The Charged Accused, and Review Of Evidence In Isolation or Cumulatively. An Evidentiary Hearing Will Show A 'More Likely Than Not' Test. That A Jury's Verdict Will/Would have "Undermined Confidence" In The Verdict. Wearry vs. Cain, 577 U.S. 509, 136 S.Ct 1002, 194 L.Ed. 2d 1 (2014).

33. A Prisoner Seeking Habeas Relief Is Entitled To An Evidentiary Hearing On Constitutional Contentions Based On The Record, and Outside The Record. Brooke vs. Wainwright, 345 F.2d 641, 646 (5th Cir 1965).

34. When Constitutional Rights Are Infringed. The Standards Of Certainty In Statutes Punishing For Offenses Is Higher Than Those Depending Primarily In Statutes Punishing For Enforcement. The Crime Must Be Ascertainable Standards Of Guilt Where Men Of Common Intelligence Cannot Be Required To Guess At The Meaning Of The Enactment. Winters vs. New York, 333 U.S. 507, 68 S.Ct 665, 92 L.Ed 840.

35. All Appellate Court Are Objectively Wrong On All Basis For Denying Cert. Of App., Evidentiary Hearing, and Court Transcript To Substantiate The Claim. Banks vs. Dretke, 126 S.Ct 1256, 1282 (2004).

DID THE LOWER COURTS ABUSE THEIR AUTHORITY IN
QUESTION FOR DENYING THE APPELLANT A CERTIFICATE OF
APPELLABILITY

36.A Prisoner Seeking Habeas Relief,Under The Miscarriage
Of Justice,Will In Fact Create An Exception To The Procedural
Bar.Sawyer vs.Whitley,505 U.S.333,112 S.CT 2514,120 L.Ed.2d
269(1992).

Creating Entitlement To The Presumption Of Innocence.Dretke vs.
vs.Haley,124 S.CT 1847,1856,1541 U.S.386,393,158 L.Ed.2d 659
(2004).

37.Claims Are Not Procedurally Barred Even Though Not
Presented On Direct Appeal In Dallas,Texas At The Criminal
Courts Of Appeals.Davila vs.Davis,582 U.S.610,137 S.CT 2058,
2065,148 L.Ed.2d 603(2017).

Shall The Court Appointed Counsel Fail To Raise In The
Defendants Best Interest.His ACTUAL INNOCENCE Claim.This
Alone Will Automatically Overcome The Procedural/Exhaustion
Bar.Davis at 2061.

38.As Presented Once Before The U.S. District Court In
Eastern District Of Texas, and The Honorable Fifth Circuit
Court Of Appeals.The Appellant Need Only To Present Once
Before The Criminal Court Of Appeals.Bart vs.Titlow,571 U.S.
12,15,134 S.CT 10,187 L.Ed.2d 348(2013).

39.Clearly Established Standards Allows This.Marshall vs.
Rodgers,569 U.S.155,133 S.CT 1446,1450,185 L.Ed.2d(2013).

40.The Supreme Court May View The Fifth Circuit Usual Practice, and Long Held Court Precedence In Terms Of Presentation, and First Exhaustion.Gray vs.Netherland,518 U.S. 152,116 S.CT 2074,135 L.Ed.2d 457(1996).

41.Kirkpatrick vs.Butler,870 F.2d 276,283(5th Cir 1989); Myers vs.Collins,919 F.2d 1074,1077(5th Cir 1990);Martin vs. Mackey,98 F.3d 844,849(5th Cir 1996);Moore vs. Quarterman,526 F.Supp.2d 654,660(w.d.tex.2007).

42.We Must Not Stray From Long Decisional Law.Seeing That The Federal Rules Of Criminal Procedure Apply To All Criminal Cases In District Court.As Well In The Criminal Court Of Appeals.Harrison vs.U.S.,191 F.2d 874,879(5th Cir 1951).

43.A State Prisoner Claim Is "fairly Presented" To The State Court When The Claim Is Asserted In Terms So Particular As To Call To Mind A Specific Right Protected By The Constitution or alleges A Pattern Of Facts That Is well Within The Mainstream Of Constitutional Litigation.Johnson vs.Cain,712 F.3d 227,238(5th Cir 2015).

44.Consistent With The Texas State Systematic Scheme Procedural Framework.The Appellant Has Overcome The Presumption Of Correction To Proceed, and REMAND For ~~Further~~ Consideration.Trevino vs.Thaler,133 S.CT 1911,1921,105 L.Ed.2d 1050(2013).

STATEMENT OF THE CASE

On September 16th, 2007. At Around 12:20p.m. The Petitioner Was Pulled Over For Various Undocumented Traffic Violation(s). Officer Joel Scott As An Identified Plano Police Officer Requested Identification From The Appellant. The petitioner Presented An Oklahoma State I.D. In Which Could Not Be Confirmed, Cause The License Database Was Down.

Officer SCOTT Requested That The Defendant Step Out The Vehicle To Conduct A Search. The Petitioner Stepped Out The Car With No Reluctance To Conduct The Search.

Officer Scott Recovered A Red Wallet From Under The Petitioners Car-Seat Out Of Plain-View, and As Well A Radar Detector Which Was Uncovered Out Of The Car's Glove Compartment Out Of Plain View.

At Around 12:30p.m. A Dallas Detective Conducted A Burglary Investigation, and Requested For An Explanation Of The Alleged Stolen Items.

The Defendants Answer As Stated Was "I DONT KNOW" As An Affirmative Answer For Items That Which He Is Not Aware Of. At The Time During Visitation At JEFFREY CAROLINAS Apartment (his alibi). The passenger MARSALIS HUTCHINSON Was Out, and About During This Time. In As Well During The Time Of A Called In Burglary.

During The Time Of Trial. The Petitioner Was Not Placed At Either Store In Question Of The Victims Credit Card Usage. The Appellants Court Appointed Counsel Argued The Standard Of Sufficient Evidence. Rather Than The ACTUAL INNOCENCE Claim.

REASONS FOR GRANTING THE WRIT

Pursuant To Supreme Court Rule 10

That Is Neither Controlling,Nor Fully Measuring The Courts Discretion;(a)has so far departed from the accepted, and usual course of judicial proceedingd,or sanctioned such a departure by a lower court,as to call for an exercise of this Courts supervisory power

Further To Establish In jurisprudence That A Petitioner Need Not Exhaust Every Level Of Appeals Within The Texas Structure Of Procedural Exhaustion.

Seriously Reduce The Amount Of Incarcerated Individuals Who Are Found Guilty Under The circumstantial Standard Who Are Innocent, and Charge With A Burglary Of A Habitation.

Granting The Writ Of Cert Will Resolve A Serious Conflict Of Circuit Splits.

STANDARD OF RELIEF

1)The Petitioner Prays That This Court GRANT The Issue Of Jurisdiction, and BIND The STAMP Of NULLITY In Regards To The TEXAS STATE STATUTE ON ITS FACE.

GRANT the Petitioner An Immediate Release

2)The Petitioner Prays That This Honorable GRANT The Special Issue Of ACTUAL INNOCENCE.

VACATE The Judgement

3)Shall The Court Agree,GRANT A CERT OF APPELLABILITY On Any Issue Necessary.

CERTIFICATE OF COMPLIANCE

NO.

JOHN P. WALLACE Petitioner

vs.

LORIE DAVIS Respondent

As Required By The Supreme Court Rule 33.1.i, and
33.(h).I Certify That The Petition For Writ Of Cert
Is Fully Complainant With This Courts Decatur.
Therefore Contains 1,885 words, Excluding Parts By Rule
33.1(d).

I, JOHN P. WALLACE, Swear Under Oath, and The Penalty
Of Perjury. That As Pro-se Petitioner. The Words Accounted
For Are Close, and Proximally Counted Correctly, and Under
9000 Words. exec.10-25-2020

RESPECFULLY!
JOHN P. WALLACE

CONCLUSION

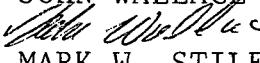
The Petitioner Received Motion For Reconsideration
Judgement, Last Ruled On. On 7-29-2020.
The Judgement Was Ruled On 7-27-2020

Therefore 90 Calender Days From That Date Ended On
~~10-25-2020~~ 10-25-2020.

The Petition Was Placed In The Prison INDIGENT BOX
On 10-24-2020, Which falls On A Saturday The 89th Date.
The Petitioner Is Not Responsible for When the Mail Is
Processed. Which At The Texas Prison Unit Is Monday,
Wednesday, Friday. It Is Also Inspected For Contraband, and
Processed Sequentially. As Saturday, and Sunday Is A
Weekend. The Petition Is Deemed Timely As Deposited
Under Oath.

I, JOHN WALLACE, Swear Under Oath, and The
Penalty Of Perjury That All Facts Are True, and
Foregoing As Omitted. exec 10-24-2020

RESPECTFULLY!

JOHN WALLACE

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