

20-6613

No.

IN THE
SUPREME COURT OF THE UNITED STATES

C.D. Pickle Jr. — PETITIONER
(Your Name)

vs.

Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Mississippi Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

C.D. Pickle Jr. #31459
(Your Name)

Unit 25, C-Zone, bld 167
(Address)

Parchman, Ms. 38758
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Leflore County Circuit Court, Mississippi Court of Appeals, and Mississippi Supreme Court's findings and rulings, (that Pickles P.C.R. claims are procedurally barred), are clearly erroneously based upon contrary Mississippi Supreme Court's established and mandated precedent case laws of, Rowland v. State, 42 So.3d 503 (Miss. 2010), Davidson v. State, 850 So.2d 158 (99) (Miss. 2003), and Typham v. State, 47 So.3d 698 (96) (Miss. 2010). And as such, violates Pickles 14th Amendment Rights to Due Process and Equal Protection of the laws?
- 2) Whether the "constructive Amendment" to the Grand Jury Indictment #7883 voided the indictment #7883 Grand Jury's charge, vacating the Circuit Court's "subject-matter jurisdiction" to proceed to conviction and sentence Pickle of a capital offense without ever obtaining or serving any new indictment from Grand Jury against Pickle. (Based on Ex Parte Bain, 124 U.S. 1, 7 S.Ct. 787 (1887) and Ashwell v. State, 266 So.3d 69 (Miss. 2017) ?
- 3) Whether the "constructive Amendment" to Grand Jury Indictment #7883, via jury

instructing "S-2 and D-7") amounts to
a fundamental Constitutional violation. Based
on Decker v. State, 66 So. 3d 654 (Miss 2011)?

f) Whether the full phrase; "With or Without
any design to effect death" is an essential element
of Capital Murder, pursuant § 97-3-19(2)(e)?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

United States Constitution

<u>5th Amendment Clause</u>	-- -- -- (3)(4)(6)(7)
<u>14th Amendment Clause</u>	-- -- -- (1)(3)(4)(5)(7)

Statute

<u>Miss. Code Ann. § 97-3-19(c)(8)</u>	-- (11)
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IN THE
SUPREME COURT 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 _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at UNKNOWN; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 November 17, 2020.
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: PENDING, and a copy of the order denying rehearing appears at Appendix E.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ...; nor be deprived of life, liberty or property, without due process of law, ..."

14th Amendment

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the case

Pickie stands before this Honorable Court, convicted

and sentenced to life imprisonment for a criminal offense

for which Pickie has never been arraigned or not indicted

for which charges the elements of a criminal offense of

capital murder. As such, the circuit court lacked the "subject-

matter jurisdiction" to proceed to trial and conviction of the

capital murder offense elements which had been charged via

a constructive amendment to Grand Jury Indictment #7883

via jury instructions "5-2" and "D-1". This discrepancy

between the elements of the criminal offense charged

by the Grand Jury Indictment #7883 and the jury instructions

changed via instructions "5-2" and "D-1", violated Pickie's

Constitutional right to indictment, under 5th Amendment through

the 14th Amendment clause of U.S. Constitution, as well

as violations of Mississippi Constitution.

Pickie filed his Post Conviction Motion with the Circuit

Court of Leflore County, in which the Court dismissed

as procedurally barred, even though these constitutional

violations ARE excepted from the post-conviction procedural

bars based upon the established precedent Mississippi case

laws mandated rulings: Rowland v. State, 42 So.3d 503 (Miss.

2010); Davidson v. State, 850 So.2d 158 (9th (Miss. 2003);

and Fulgham v. State, 47 So.3d 698 (9th (Miss. 2010).

The Mississippi Court of Appeals then "affirmed"

the circuit court ruling denying my 14th Amendment

rights to due process and equal protection of the laws.

As a matter of established precedent state law

Pickie was entitled to relief from conviction and sentence.

The Mississippi Supreme Court, the Court of Appeals,

and Circuit Court of Leflore County rulings violated Pickie's

(7)

U.S. Constitutional Rights to "Due Process and the Equal Protection of the Laws."

Under Mississippi Supreme Court precedent CASE laws, Pickle has shown that "Fundamental Constitutional Errors" had occurred at trial, and AS such, Pickle's claims of "Fundamental Constitutional errors" "ARE" excepted from all procedural bars of the Uniform Post-Conviction Collateral Relief Act.

Therefore, the Mississippi Court of Appeals and Leflore County Circuit Court findings and rulings that Pickle's claims ARE procedural barred ARE clearly erroneous and void AS A matter of law.

Under the MANDATE of the Rowland V. State, supra, decision, neither the Mississippi Supreme Court, the Court of Appeals, nor Leflore County Circuit Court had ANY "DISCRETION" in the matter and were required to except Pickle's claims from the procedural bars.

This U.S. Supreme Courts review and intervention is needed to correct this "MISCARRIAGE OF JUSTICE" and to protect Pickle's Right to "Due Process and Equal Protection of the Laws."

The trial Courts' constructive Amendment of Grand Jury indictment #7883 charge, via jury instructions "S-2 and D-7" in which altered the elements of Grand jury Indictment #7883, in effect "VOIDED" the Circuit Court's jurisdiction over the Grand Jury Indictment #7883 charge.

And since there was and is no other Grand Jury Indictment filed against Pickle, the Circuit Court lacked the "Subject-Matter Jurisdiction" over ANY charge against Pickle, especially the Capital Murder charge found in jury instruction "S-2 and D-7".

The trial Judge took the Grand Jury #7883

charged elements from the jury at end of the "1978 (SECOND) trial" by granting jury instructions "S-2" and "D-7" elements in there place, thus putting Pickle to trial and conviction for a capital offense for which Pickle has never been charged with committing by any Grand Jury Indictment. Nor had Pickle been Arraigned on such capital offense.

Pickle is actually presumed innocent of the Grand Jury Indictment #7883 charged offense, because the elements charged by Indictment #7883 has never been presented to any trial jury, and as such, "No trial Jury" could find these elements beyond a reasonable doubt NECESSARY to return a guilty verdict. And No Grand Jury indictment has ever been served on Pickle in which charges the NECESSARY elements in which the Judge charged via constructive Amendment of Indictment #7883, by jury instructions #S-2 and "D-7", in which Pickle's conviction and life sentence is based upon.

The 5th Amendment Clause of U.S. Constitution holds: "NO PERSON shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

Once the trial Judge constructively Amended the Grand Jury charge, (via instructions "S-2 and D-7"), the trial court lacked any jurisdiction to proceed any further, against Pickle, in the progress of the case, because the jurisdiction of the offense is gone, for

For want of a Grand Jury indictment. If there is nothing before the Court in which Pickle, in the language of the Constitutional 5th Amendment, can be "held to answer," then Pickle is entitled to be discharged, so far as the offense originally presented to the Court by the indictment #7883 is concerned.

There was nothing before the Court on which it could hear evidence or pronounce sentence.

(See: Ex Parte Bain, 121 U.S. 1, 7 S.Ct. 781 (1887),
(Also: Ashwell v. State, 266 So.3d 69 (Miss. 2017)).

"REASONS FOR GRANTING the Petition"

The "ends of Justice" demands that this Honorable Court use its discretionary review, of the Writ of Certiorari, so as to protect Pickle's U.S. Constitutional Rights to "Due Process and Equal Protection of the laws". As well as, to protect all the other offenders who comes before the Mississippi Appellate Courts with claims of "Fundamental Constitutional errors", in which the Circuit Courts procedurally bars their valid claims.

In Pickle, sub-judice, as a matter of law, the trial Court had no "subject-matter jurisdiction" to proceed against Pickle to require him to answer to the constructive amended jury charge. Pickle was never served any Grand Jury indictment for the amended capital murder charge found in jury instruction

"#5-2 and #5-7", therefore Pickle is not required to answer to these charges.

As such, Pickle is "actually innocent" of the Amended Capital murder charge. And, since no trial court has ever found Pickle guilty of the Grand Jury charged elements of Indictment #7883, Pickle is still presumed innocent of its charge.

This Honorable Court must "GRANT" this Motion, and find that the Mississippi Supreme Court, the Court of Appeals and the Circuit Court entered erroneous decisions concerning Pickle's Post Conviction claims as procedurally barred, and contrary to established Mississippi precedent Supreme Court's case law ruling Rowland v. State, supra.

And, to order, the relief that Pickle's conviction and life sentence be "Null and Void" for lack of "Subject-matter jurisdiction" and unconstitutional "Constructive Amendment", and, Pickle be discharged with Indictment #7883 "voided" with prejudice to prevent retrial in violation of the "Double Jeopardy Clause".

Conclusion

The petition for Writ of Certiorari should be granted.

DONE this 20th day of November, 2020,

by C.D. Pickle Jr. #31459

Unit 25, C-Zone, bed 167

Parchman, Ms. 38738