Questions Presented

1). Whether the court of criminal apeal's was invioaltion or not filing and ruling on all of this petitioner grounds of error that the Court of Crimial Appeal choose was not necessarry for him to file and drop His brady v. Marylandand Actual innocence claim he file in his first application and was it to be consider successive writ of his prior writ of habeas corpus back in 2012.

2). Whether Napper' case captures the doctrinal Brady v. Maryland claim, by the State dna crime lab destoyed all the dna sample collect from off of the victim in his case.

3). Whether Nappers case captures the doctrinal Brady v. Maryland, and His Actural Innocence claim in Exparte Brooks, 219 SW.3d 9, Tex. Crim. App 2007 and Schlup v. Delo, 513 U.S. 298, Article 11.07 4 (a) (2) and Article 11.071 5 (A) 2. (1995). explain in his motion.

Texas prisoner Lawrence Napper asks this court to issue a writ of certiorari to review the judgment of the United States of Appeals for the Fifth Circuit

OPINIONS BELOW

The Fifth Circuit's dismissed the appeal for lack of jurisdiction and further denied all depending motions referring to this petitioner motion for certificsate of appelability and request and request to file same in excess pages, filed on August 14, 2020). And the appeal was all considered closed.

On February 20, 2020 the petitioner filed a document titled (OBJECTION TO FINAL JUDGMENT). The district court construe the document as a motion for consideration under Federal rule of Civil procedure 59(e) and denied relief on February 27, 2020. Therefore , the final day for filing a timely notice of appeal was Monday, March 30, 2020, because the thirthieth day was a Saturday. See. FED. APP. P. 26(a)(1)(C)

The lack of a timely notice mandates dismissal of the appeal. United State v. GariciaiMachado, 845 F.2d 492, 493 (5th Cir. 1988 Accordingly, the appeal is DISMISSED for want of Jurisdiction. all pending motions are denied.

The Fifth Circuit of Appeals rendered its decision September 14, 2020. This petition was timely filed. The Supreme Court has certiorari jurisdiction under 28 U.S.C. 1254(10). The Court of Appeals possessed jurisdiction under 28 U.S.C. 2254.

CONSTITUTIONAL PROVISION INVOLVED

Amendment VI

In all prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been commited, which district shall have been previously ascertained by the law, and to be informed of the nature and the cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for the defense.

Amendent XIV

All persons born or naturalized in the United STATES, AND SUBJECT TO THE JURISDICTION THEREFOR ARE CITTIZENS OF THE United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privieges or immunities of citizens of the United State, nor shall any State

deprieve any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

The Anti-Terrorism and effective death Penalty Act, 28 U.S.C. 2254, States;

(d). An application for a writ of heabeas corpus on behalf of a person in the custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjuducated on the merits in State court proceeding unless the adjudication of the claim--

(1). resulted in a decision that was contrary to, or involved an uureasonable application of, clearly established Federal law, as determinted by the Supreme Court of the United States; or

(2). resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in th State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in the custody pursuuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctioness by clear and convincing evidence. 28 U.S.C. 2254(d) & (e) (2010).

No. -

IN THE SUPREME COURT OF THE UNITED STATE

LAWRENCE JAMES NAPPER

PETITIONER

-v-

LAWRENCE J. NPPER
TDCJ No.1080356

CIVIL ACTION No. H-20-261

November 8, 2020

VS.

BOBBY LUMPKINS, DIRECTOR,
RESPONDENT-APPELLEE

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONS DIVISION,

On petition for writ of certiorai of the UnitedStates Court of Appeal for the Fifth Circuit

PETITION FOR A WRIT OF CERTIOARI

" APPELLANT'S MOTION REQUESTING PERMISSION TO FILE TOGATHER WITH HIS CERTIFICATE OF APPEALABITY.

TO THE HONORABLE SUPREME COURT OF APPEALS JUSTICE

I.

F FACT OF THE CASE:

The instant appellant's in this case resulted from the dissmissal (WITHOUT PREDJUDUCE), enter against this appellant-Petitioner, by a United Stat-District Judge (ANDREW S. HANEN) And the UnitedState Court of Appeals Fifth Circuit court Judge before HigginBothan, Smith, and Enggelhardt, Circuit Judges.for a lack of jurisdiction becasue te petitioner in this case had suppose to file in his asking for that court to review the SOUTHERN DISTRICT COURT JUDGES RULING OF AN SUCESSIVE MOTION CONCERNING THIS PETITIONERS Bra... And Actual Innocenct claim that was never filed by the Court

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Court of Criminal appeals, nor publicly ruled onin his prior Writ Of Habeas Corpus back in Exparter Napper vs Rick Thaler, Napper vs State, Nos. 11-02-00017-CR 11-02-00018-CR, 2003 WL 231 63045.

This petitoner did file on time hismotion for the court of Appeals. The Court of Appeals has not properly rule on this issue. Mr. Napper totally show from the record of the Southern District Court DC CM/ECT LIVE- US District Court-Texas Southern, that after the objection was ruled on in 2-27-2020, Mr. Napper sure did file another Final Objection to the first one, and was enter on the record , but that court had not given an answer, so than Mr. Napper wrote a letter concerning the answer and respond on 5-7-2020, and still no answer from that letter, so he wrote another letter on 6-15-2020, and still no answer or respond from that court. Even so during the filing of the motion on 2-20-2020, the motion was also file togather to the Court Of Appeal by Mr. Napper appealing his case. A Copy of this motion will be attach to this motion, and even if the Court Of Appeal had over looked this fact, it still had jurisdiction to rule on Mr. Napper Motion,

There has not been a day that any excuse been made to drop or dismiss a case that has been inviotion of the United State - Contitution.. This is not the end of justice, and it would be a Fundamentl Miscarriage justice of any court including this one - to not review this petitioners motionfor a Brady And Actual - Innocence violation that has be clearly showed by this petitioner in this case.

II.

ARGUMENTS IN SUPPORT FOR THE DISMISSAL OF THIS PETITIONERS APPEALS BY THE COURT OF CRIMINAL APPEAL, SOUTHERN DISTRICT COURT, AND THE COURT OF APPEALS. -

This Pro-Se litigant (NO EXCUSE), proceeding without the assistance of counsel, had tried with all his might (ATTEMPTED) without the sucess in conesing CERTIFICATE of Appealability and appealability and under the same appelate brief, and all with in the Fifth Circuit Court of Appeals requirement.

The petitioern in this case filing Pro Se Motion for Reconsideration of this case to have both been rule on but not yet considered to even review his motion for his Brady V. Maryland and Actual Innocence clian to its merit. This petitoner again back on a MOTION FOR RECONSIDERATION , deserve by law to be review for its constituional violation that have never been reviewed. Out of the (5)-FIVE GROUNDS that was filed by Mr. Napper none of the present court with in their Jurisdiction has review all of his grounds of error in his prior writ of habeas Corpus in his old writ of habeas corpus or in his motion now to re-

consideration that desire its review in his Aggravated Kidnapping and Sexual assault of a Child. This petitioner will also show this court as he has in the other courts, that it would be in the interested in this court and a miscarriage of juctice of his appeal not to review his constitutional violation in his motion not review in his first Habeas Corpus . [EXPARTE NAPPER V. THALER, H-10-3550 and H-10-3551 S.D TEX. May 31, 2012, and the dismissing of Mr. Napper Habeas Claim of the merit with prejudice instead of (ON the merit of the case).

This is concerning at his trial in Harris County Cause No. 886 45-88645, when there prosecutor destroyed by thier agency of the Houston Police Department Dna Crime , use testimony of Dna sperm used to connect Mr. Napper to this crime, without his defense team , and anybody else havein the legal fair opportunity tosee if in fact if there ever was any dna sample swab for him or them to test. The petitoner was not identified by the victim at his trial in the jury present, and testified that the dna was not his dna. Not to mention 9-Years later, the trial judge bench warrant Mr. Napper back to court and recommented him a new trial becasue the state destroyed all the dna not allowing him the opportunity to have test the dna or anybody else to test it.

The court of the southern district has also in this petitioner motion misunderstand that it was thier own faultwhen in his original petition for a writ of habeas corpus when it denied him his certificate of appeaplability in thisfinal judgment, and terminated his public defender for federal counsel SS DOC.(#36), without allowing defense counsel t further proceed to finish arguing in a (14) Day objection after his judgment to the Brady and Actual innocence claim in that court at that time and now want to call it a successive writ on Mr. Napper behalf. Becuase of this error of the Southern District back on that day at that time it was under that status an interferènce of that court in that process of his constutional right to give him or allow him to proceed to all further proceeding thereafter its final judgements.

Note here [PURSUANT TO 18 U.S.C. 3006A(c). A PERSON TO WHO COUNSEL IS APPOINTED SHALL BE REPRESENTED AT EVERY STAGE OF THE PROCEEDING FROM HIS INITIAL APPEARANCE BEFORE THE UNITED STATE MAGISTRATE JUDGE OR THROUGHT APPEAL, INCLUDING ANCILLARY MATHERS APPROPRIATE TO THE PROCEEDINGS. SEE also 18 U.S.C 3599 (e) (UNLESS REPLACE BY SIMILARY QUALIFIED COUNSEL UPON THE ATTORNEY SHALL REPRESENT THE DEFENDANT THROUGHT OUT ... ALL AVAIABLE POST CONVICTION PROCEEDING, TOGATHER WITH APPLICATION FOR STAY OF EXSECUTION AND OTHER APPROPRIATE MOTIONS AND PROCEDURES, AND SHALL ALSO REPRESENT THE DEFENDANT IN SUCH COMPETECY PROCEEDING AND PROCEEDING AND PROCEEDING FOR EXECUTIVE OR OTHER CLEMENCY AS MAY BE AVAILABLE TO THE DEFENDANT). AND RULE 8 (c) OF THE RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURT (2010). THESE RULES DONOT LIMIT THE APPOINTMENT OF COUNSEL UNDER 18 U.S.C. 3006A IN ANY STAGE OF THE PROCEEDINGS, FURTHERMORE, IN HABEAS CORPUS PROCEEDING THE ORDER SHALL BE (SUBJECT TO REVIEW ON APPEAL). See U.S.C. 2253.

Mr. Napper did not get this opportunity or Attorney to object to the final judgment concerning any issue after the final judgment, which interfer with this violation from the Court of criminal appeals court.

This petitioner further understand that at this process of the proceeding in federal court he donot have a right to have counsel appointed to him, but in according to this status to 18 U.S.C 18 U.S.C. 3006A(c) Once the judge rule and appointed him a counsel for this process, the judge would be inviolation of interfering into the appeals process of effective assistance of counsel to this petitioner if and when his counsel was interminated for these two grounds that was not allowed to be filed and rule on to its merit by Mr. Napper.

Rule 11 of the govering section 2254 on the issue of Certicate Of Appealability cases, required district court to issue or deny a certificate of appealability when entering order that is adverse to the petitioner. See 28 U.S.C. 2253

A certificate of appealability issues unless the petitoiner makes a substanial showing of a denial of a constitutiona right. Schlup v. Delo, and 28 U.S.C 2253 (c). (2), which requires a petitioner to demonstrate that reasonable jurists would find the

district court's assessment of the constitutional cliam debate or wrong. See Also Tennard, 542 U.S at 282, quating - slack v Mcdanil 529 U.S. 473, 484 (200).

Under the controlling standard, this require a petitioner to show that reasonable jurist could debate whether or for that matter, aggree that the petition should have resolved in a different manner or that the issue presented were adequte to deserve encouragement to proceed further. Miller-El v. Cockrell U.S. 322, 336 (2003).

A trial court destruction of material and excuplatory value of the unverified dna sample unseen independantly and testified to by the states two dna expert connecting Mr. Napper to this crim denyed him this same acess to that evidence to ne will - prove in his motion he was entitled too, which the court of crim nal appeal 's denied him to have and present in his own defense not to have been his dna sperm. Brady v Maryland, would have represent by not allowing him to recieve the said sample or to even test them for his self, was as his Trial Judge in Harris Court a due-process violation for destroying that evidence at any cost.

This certificate of appealability should be reviewed and granted. It is Mr. Napper constitutional right that the prosecutor duty to preserve evidence contrubuting to this defendant's guilty or innocnce, where the trial use that evidence to support there conviction, it was justas important for the accuse to show or at least verify the dna was not his or that experts was not be ingtrueful when he testified the dna belong only to Mr. Napper and appart from anybody else in the shole wide world if there ever - was any sample in the first place. Mr. Napper took the stand at his trial in risk of his prior conviction and testified to the jury that it was not his dna recovered the state and that it was false Mr. Chu claim he had tested. If the evidence has been destroyed than there is no prove could be made if it donot exisit anymore. THe court did nothing to correct this , the state could - have (INDEPENDANTLY) at least check thier experts data to his result , it would have found it did not infact match this petitoner or not. Becasue there has never been a dna hearing in this case, a hearing would have shown the jury the dna dna infact by the

really not made no match to this petition at all. See Pena v. State, 285 SW3d 2009, The state was reqired to preserve those sample, and give the defense the sample as well. See (TEX. HEALTH AND SAFTY CODE 481.160). He was entitle to used the same dna sample tested as the state claim they had used and found the exculpatory value of them before they was destroyed which found the attacker of this defender victim.

See Jean V. Collins, 221 F.3d 56,When a procedural safe guard that comprises on element of a fair trial, such as the right to exculpatory evdience, the concurrence thanks the remdy is a new trial because of the constitutional injury can deprivation of liberty without due process of law. Jean further also statem (THE RIGHT TO EXCULPATORY EVIDENCE IS ALREADY PROTECTED UNDER PROCEDURAL COMPONET OF THE DUE PROCESS CLAUSE. Also See State v. Vasquez, 230 SW3d 744, TEX.APP. 20070, And Garil V. Vasquez, 900 SW.2d 721 (TEX. APP. 1995), A defendant therefore has a legitiate interest in conducting his own test on any sample the State may use to gain a conviction, He also has a statuory authorization . See Yarris v. county of Delaware,, 465 F.3d 129, 3rd cir. 2006), Which is the guide by Youngblood and Fisher v. illoniss, Yarris COUNTY LAW ENFORCEMENT OFFICERS ALLEGED CONDUCT IN MISHANDING AND DESTROYING THE DNA SAMPLE THAT COULD HAVE BEEN USE FOR THE DNA TESTIG BY A CITIZEN.

YARRIS CONTINUE TO STATE, (WELL ESTABLISH DUE PROCES OFFICERS FAIL TO PRESERVE POTENTIALY USEFUL EVIDENCE IN BADFAITH AND CITIZEN ALLEGED THAT THE OFFICER KNEW OF THE EXCULPASTORY VALUE OF THE EVIDENCE AT THE TIME IT WAS DESTROYED. Also note here that Youngblood establish the standard in Yarris.

See HILLARD v. SPALDING, 719 F.2d 1643 (1983), IF THE SAMPLE CAME INTO THE GOVERNMENT HANDS PRIOR TO THE TRILA, AND SUBSQUESTL BEEN DESTROYED HOWEVER THE GOVERNMET MAY NOT INFERFER WITH THE ACCUSES ABILITY TO PRESENT A DEFENSE BY IMPOSING ON HIM A REQUIREMENT WHICH THE GOVERNMENT OWN ACTION HAS RENDER IMPOSSIBLE TO FULFULL. Also, WHERE THE DEFENDANT HAVE NOT BEEN PERMITTED TO TEST A SPPERM SAMPLE, IT IS IMPOSSIBLE FOR HIM TO PROVE HE WAS ACTUALLY PREJUDICE, WE ASUM HE WAS. Also, THE GOVENMENT SUPPRSSION OF THIS TYPE OF EVIDENCE WHICH DEPRIVED THE DEFENDANT OF

VIOLATIONS FROM THE OUT SET. AND FROM THIS TEETH PRINT ,, THAT WHEN A JUDGE IS IN GRAVE DOUBT, THE DEFENDANT MUCH WIN WHEN SUPPORTED BY THE RECORD. The prosecutor used false evidence agains Mr. Napper concerning the dna sperm, which was never give to him to test and show that the dna was not his dna or to even show more proof that no such dna ever exist from the start. This will be abuse of discretion and a total disregard of (FUNDAMENTAL OF A MISCARRIAGE OF JUSTICE) to review his claim or to deny Mr. Napper his entitlement of his Right to a fair trial from this trial court (PROCEDURAL DUE PROCESS RIGHT). And if both the court of the district court and the court of appeal would take an extra look into the exceptions to procedural defult laws and rules and Motion Provision , than just as oppose to just the general rules. None of these court has even first bother to show or explain that Mr. Napper at this ppoint of his final judgment or objection denied has shown he is forcing new grounds of errors, nor determind by any review from Mr. Napper's motion that he was not entle to the destruction of the semen sample evidence used to convict him by the prosecutor.

ISSUE NO. (1)

WHETHER ALL THREE COURT JUDGES ABUSED ITS DISCRITION TO TAKE JURISDICTION AND REVERSSBLY ERROR WHEN IN PETITINIONER's ORIGINAL AND TIMELY FILED FEDERAL HABEAS PETITION DUE TO HIS ACTUAL INNOCENCE CLAIM DISMISS AS BEING SUCCESSIVE IN HIS REQUEST UPON THAT COURT TO FILE ITS OWN MOTION FOR RECONSIDERATION WAS NOT SUCCESSIVE----------

STANARD OF REVIEW

Precedural due process directs that when a district court henies rule 60(b) Motion, is required to obtain a COA to appeal the denial of his rule 60(b) Motion. CANALES V. QUARTERMAN, 507 F.3d 884, 887, (5th Cir. 2010); Gonzalez V. Crosby, 545 U.S tobe treated as second or Successive petition. Phelps v. Alameida. 569 F.3d 1120 9th (Cir. 2009).

WHAT COULD BE HIS ONLY OPPORTUNITY TO CONCLUSIVELY PROVE HIS INNOCENCE CANNOT WITHSTAND CONSTITUTIONAL SCRUTINY. Even to asum a procedural violation or a failure to file a apeal to the Court of Appeal, can never be an excuse to review a violation of the constituion of the united state of any kind. Keep in mind- also, the trial court did not contest the eye witness testimony when the victim fail to independantly identify Mr. Napper, nor - did the state trial prosecutor give any legal reasonable explanation when MR. NAPPER question them when he testified, why did the state not save the dna so that he could prove it was not his and that thier dna expert had testifed falsely. [THE TRIAL COURT NEVER DID OR COULD GIVE A ANSWER TO THAT IN THE PRESENT OF THE JURY OR ANY WHERE ELSE IN THE APPEAL PROCEEDINGS.

CONCLUSION

The district court further state that is is required to dis- - miss this petition without prejudice becasue there is no indication that Napper has sought or recieved authorization from - the Fifth Circuit Court to proceed with a successive petition in that court. Although this court maybe somewhat in the right as a general rule and also may include 60(b) Motiom, AEDPA's, but that court didnot consider and alright ignored's any and all (EXCEPTIONS) to further support determination of the general rules that this court jurisdiction was still within ruling or reviewing without the permission from the fifth cir. court of appeal court.

This court further content that Mr. Napper only get one bit of the apple, this court because it has not had a proper review of the his motion that supports the record or his constitutional claim in Mr.Napper to claim for these court to determine first from his motion as require by law. Moreover these courts are all failing to understand clearly here because these court has not offorded Mr. Napper a Hearing (De Novo) and reconized that it wasthe Stae Trial Court who first reconize the apple and took the first bit when it (RECOMMENTED A NEW TRIAL BECAUSE OF A WELL UNDERSTOOD BRADY DUE PROCESS VIOLATION FROM THIS OUR OF

THE-LAW

Federal Rules of Civil Procedure, Rule 60(b) motion for relief from judgment or orders allows party to seek relief from a final judgnment or order by requesting reopening of thier habeas under a limited sect of circumstance including Fraud, Mistake and newly discovered evidnece. Liljeberg v. Health Service Acquistion Corp, 108 Sct. 2194, (1988), Garia v. Thaler, 793 F. SUPP. 894 (W.D TEX. 2011):

ACTUAL-INNOCENCE-CLAIM

See Exparte Brooks, 2000 WL 1759289, C.C.P (2007). The Court Of Criminal Appeal held that subsequent application for writ of Habeas Corpus asserting a contitional violation, must be accompanied with prima facie claim of actual innocence, in order to satisfy requirement in code of criminal procedure that a subsequent application application for writ of habeas corpus must contain sufficient specify fact's establishing by a prepondence of the evidence that, but for a constitutional violation, no rational juror would have found applicant guilty beyond a reasonable doubt, Vernons Ann. Texas C.C.P, Art. 11.07 4(4)(2), 11.071 5 (A) (2), which was enacted in response to Schlup v. Delo, 115 S.ct 851.

IN Schlup the UnitedState's Supreme Court ruled that the Federal State Supreme Court rule that the Federal Habeas Cor - Corpus petition must show that a constitutional violation more likely than not resulted in the conviction of an innocence prisoner. ID. AT 327, 115 S.CT 851.

The purpose of the subsequent writ provision is proven review in only those cases where the legal basis for the claim was previously unavaiable, or to REMEDY A MISCARRIAGE OF JUSTICE, as was tired to (SCHLUP).

Napper contends as attacking the Southern District order in the denial of his motion as being successive under the standards in McClesty v. ZANT, 111 S.ct 1454 (1991), that if the habeas petitioner cannot show cause, failure to raise claim in - earlier petiton may nevertheless be excused if he or she can

Also Brady violation occurs when the prosection fail to disclose evidence that may impeach the credibility of a State's witnesss when the witness credibility is material to postion of the accuse's guilt. Little v. State, 971 SW2d 729 (TEX. APP 1998).

Also See Exparte Richardson, 70 SW.3d 865, Tex Crim. App. 2002. The materiality element of the rbady due process violation, the question is not whether the defendant would more likely than not have recieved a different verdict the trial evidence but whether in it's absence he recievd a fair trial resulting in a verdict worthy of confidence. in other words brady ensures that the defenant will obtaim relief from a conviction [TAINTED] by the state's [NONE DISCLOSURE OF MATERIALLY FAVORABLE, REGARDLESS OF FAITH.

Also see Fero 39 F.3d 1472, Mr. Napper contends here also like in Fero, even thought there is not evidence to suggest that the the state's with holding of the evidence was either calulated or Malcious. This court has previosly held that (NEGLIGENT OR INAVERTET) SUPPRESSION OF THE EVIDENCE IS NEVERTHELESS FOR THE BRADY PURPOSES. Click no to case

Also see Detmering v. State, SW.2d 863, (1972 Crim. App.), THIs ocurt on Art. 36.14 V.A, C.CP, our present judge said that if there is known that the state is planning to base it's case on a finger print, bullet, pistor or rifle, book or record, the defendant can have his own expert exaime the same under the (SAFE GUARDS PROVIDED). Mr. Napper contends the state ourt violated a guarranteed constitutional right.

THe petitoner Napper condends like in Osbore v. dist. attorney office, 521 F.3d 1118, (9th Cir 2008), Brady ensure a fair trial a defendant right to pre-trial disclosure under brady is (NOT) conditioned on his ability to demonstrate that he would or even proablely would preval at trial if the evidence were disclosed.

Again this beg the question here concerning the Southern District requiring it self to impose with respect tomtne parties not arguring from the state Court about Mr. Napper or the court of crimnal appeal, (NEVER COMPLAIN THAT Mr. NAPPER MTION WAS A ISSUE AS BEING TIME BAR, SUBUENT, NOR SUCCESSIVE).

So this the court of criminal appeal and the Southern District and Court of appeals is out of is own jurisdiction to argue and hold Mr. Napper by suprise to defend the successive writ provision as being in violation, becasue if the state c court of criminal appeals court did not argue or deny petitioner's Mr. Napper motion on a procedural default subsuent writ or successive writ, A DISTRICT COURT OF SOUTHERN DIVISION IS NOT REQUIRED TO RAISE THE ISSUE. See Trest v. CAIN, 118 S.ct 478, (1997).

Nor is a court of appeal is not require to raise the issue of procedural default's. In the habeas context, procedural default is normally a defense that the state is obligated to raise andperserve nifeithhas not lose the right to obsenbathe defense. Also again, Mr. Napper the petitioner here is also q questioning both the District Court as well as the Court of [illegible] appeal (5th Cir) is not require to force such a suprise and hardship upon him to address issue that niether he Court Of Criminal Appeal or parties by law have already waived, once it had thier oppornunity to exhaust.

Even thought these issue was supported by the trial court records, or even asuming both of these court would be right at any issue they complain of to Mr. Napper process right to be appealing his two issues tht was never consider in his first writ of habeas corpus, these court is not the end of justice here and cannot continue to deny Mr. Napper that would subjected him an Absolute right. See Keeter v.State, 105 SW.3d (TEX. APP. 2003)), Keeter Makes it clear to any court of appeals (A DEFENDANT MAY COMPLAIN ABOUT THE VIOLATION OF AN ABSOLUTE RIGHT OR PROHIBITION ON APPEAL WITHOUT HAVING RASIED THE WUESTION IN THE TRIAL COURT BRADY CLAIM. Mr. Napper contends here, Such absolute rights, those pertaining tosysemice requirement of judie cal proceeding cannot be waived or forfeited even with the consent: IMPLEMENTATION OF SUCH RIGHT's IS NOT OPTIONAL AND CANNOT BE WAIVED OR FORFEITED.

Also see Mr. Napper contends that in U.S. V. Lioyd 71 F. 3d 408, D.C Cir, 1995, New trial motion based on evidenece withheld in violation of brady cannot be denied on the basis that new trial would not have produce different out come, such violation is NOT subject to HARMLESS ERROR ANYLSIS, is all the more reason why this court shuld consider reviewing and set aside any successive motion or writ error of this safe guarded due process vilation concerning a brady violation.

SEE THE FOLLOWING CASES IN A NUTSHALL WHY THIS BRADY CLAIM IS CONSIDERED REVIEW OF THIS COURT WITHOUT GOING IN TO THE ACTUAL FACTUAL ISSUE, BUT THE DUE PROCESS VIOLATION WHICH SHOULD LEAD THIS COURT TO RECONSIDER ITS DISMISSAL OF THE DISTRICT COURT FINAL ARGUEMENT AND OBJECTIONS AS A SUCCESSIVE WRIT OR MOTION AND GRANT HIS RELIEF IN THE COURT OF APPEALS AND THE UNITED STATE SUPREME COURS.

(5). See ARIZONA v. YOUNGBLOOD, 109 S.ct 333

(a). IN A CASE WHERE IS NO DOUBT THAT THE SEMEN CAME FROM THE ASSAILANT, THE PREUMPTION MUCH BE THAT IT BE PRESERVED. THIS IS AN EXCEPTION TO THE SUCCESSIVE WRIT RULE PROVISION.

(6). See McBRIDE V. STATE, 838 SW.2d 246, (TEX. CRIM. APP.)

(a). CONSEQUENTLY, THE REVIEWING CURT MUCH FOCUS UPON THE PROCESS AND NOT THE RESULT. IF THERE ERROR OF A MAGNITUDE THAT IT DISRUPTED THE JUROR'S PROPERLY EVALUATION OF THE EVIDENCE NO MATTER HOW OVERWHELMING IT MIGHT HAVE BEEN THAN THE CONVICTION IS TAINTED.
THIS IS AN EXCEPTION TO THE RULE OF PROCEDURAL DEFAULT PROVISION OR ANY OTHER RULES.

(7). See MURRY V. CARRIER, 106 S.ct 2635 (1986).

(a). THIS COURT FOR AUGUEMENT SAKE HELD IN EXTRAORDINARY CASE WHERE THE CONSTITUTIONAL VIOLATION HAS BEEN PROABLELY RESULTED IN CONVICTION OF ONE WHO IS ACTUALLY INNOCENCE OF A BRADY VIOLATION, FEDERAL COURT MAY GRANT WRIT EVEN IN THE ABSENCE OF A SHOWING A CAUSE FOR PROCEDURAL DEFAULT.

(b). Also held, WE REMAIN CONFIDENCE THAT FOR THE MOST PART VICTIM FUNDAMENTAL MISCARRIAGE OF JUCTICE WILL MEET THE CAUSE AND PREDUJUICE STANDARD, AND FEDRAL HABEAS COURT MAY GRANT THE WRIT EVEN IN THE ABSENCE OF A SHOWING OF CAUSE FOR THE PROCEDURAL DEFAULT.
THIS IS AN EXCEPTION TO THE EXCESSIVE WRIT RULE PROVISION

(8).See ADAMS V. STATE, 768 SW.2d 281 (CRIM. APP. 1989)

(a). WHERE THE RULE OF THE TRIAL JUDGE UPON THE EXISTENCE OF NON EXISTING OF CERTIAN FACTS AND TESTIMONY PRO AND CON IS INTRODUCED THIER ON AND EVIDNECE IS CONFLICTING IT BECOMES THE DUTY OF THE JUDGE TO DETERMINE THE ISSUE AND UNLESS IT APPEARS T TO THE COURT THAT THIS FINDING WAS WITHOUT SUPPORT IN THE EVIDENCE AND THAT HE HAD COMMITTED AN ERROR IN HIS JUDGEMENT THEREON, WE WILL NOT INTERFER WITH HIS FINDING THEREOF.
THIS IA AN EXCEPTION TO THE SUCCESSIVE WRIT RULE PROVISIO

(9). See SOFFAR V. DRERKE 368 F. 3d 441 (2004).

(a). TIME AND TIME AGAIN, THE SUPREME COURT HAS INSTRUCTED THAT (AEDPA) BY SETTING FORTH NECCESSARY PRECATES BEFORE STATE COURT JUDGEMENT'S MAY BE SET ASIDE, ERECTS A FOREDABLE BARRIER TO FEDERAL HABEAS'S RELIEF FOR PRISONERS WHOSE CLAIMS HAVE ADJUICATED IN THE STATE COURT, WhITE V WHEELER, U.S. 136 S.c 456 (2015). THIS IS ALSO COVERED BY THE EXCEPTIONS TO THE SUCCESSIVE RULE INVIOLATION OF ALL CONSTITUTION ERROR.

(b). IN ALVARE, AEDAPA REVIEW EXIST ONLY TO GUARD AGAINST EXTREME MALFUNTIONS IN THE CRIMINAL JUSTICE SYSTEM, WOODS V. DONALD U.S. 135 S.ct 1372.

See MUNCHINSKI V. SOLOMOM, 258 F. SUPP .3d 2017.

Mr. Napper conteds like in solomom if the lower courts as well as this court would take its jurisdistion, this court:

(a). WILL ANALZYE THE EVIDENCE AT ISUUE TO DETERMINE IF THE WITHOLDING OF THE EVIDENCE AT ISSUE DETERMINE IF THE WITH HOLDING OF THE EVIDENCE CONSTITUED A BRADY VIOLATION.

(b). IMPEACHMENT EVIDENCE AS WELL AS EXCULPATORY EVIDENCE NEED NOT BE FAVORABLE, AND THUS DISCOVERELE UNDER BRADY.

(22). See STATE V. RUDD, 871 SW.2d 530 (1194)

(a). RUDD CLEARLY EXPLIAN FOR THERE TO BE DUE PROCESS VIOLATION WHEN THE STATE FAIL TO PRESERVE POTENTIALY USEFUL EVDIENCE, (EXCULPATORY VALUE OF THE EVIDENCE MUCH BE OBVIOUS BEFORE THE STATE DESTROYED THE EVIDENCE AND THE EIVDENCE MUCH BE THAT THE DEFENDANT WOULD BE UNABLE TO FIND COMPARABLE EVIDNCE BY OTHER AVAILABLE MEANS. U.S. C.A. CONST. AMENT 14.

(23). See STATE V, VASQUEZ, 230 SW.3d 744, TEX. APP. 2007), GABRIL V. STATE, 900 SW.2d 721, (TEX. CRIM. APP. 1995)

(a). A DEFENDANT THEREFORE HAS A LEGITIATE INTEREST IN CONDUCTING HIS OWN TEST ON ANY SAMPLE THE STATE MAY USE TO GAIN A CONVICTION, HE ALSO HIS A STATUTORY AUTHORIZATION. THIS IS AN EXCEPTION TO THE SUCCESSIVE WRIT RULE PROVISION.

This petitoner also adds here the SOURTHERN District Court as well as any other court, donot have this authorite to reward a procedurl default sua sponde in if he has already in this motion given the court of criminal it opportunity to object to it which they didnot in this present motion. It just denied the motion and no rehearing.

(24). See TREST V. CAIN 118 S.ct. ct 478 (1979)

(a). WHEN REVIEWING DISTRICT COURT'S HABEAS DECISION, COURT OF APPEALS IS NOT REQUIRE TO RAISE ISSUE OF PROCEDURAL DEAULT SUA SPONTE 28 U.S.C.S. 2254.

(b). IN HABEAS CONTEXT, A PROCEDURE DEFAULT THAT IS A CRITICAL FAILURE TO COMPLY WITH PROCEDURAL LAW, IS NOT A JURISDisTIONAL MATTER. 28, 28 U.S.C.A

(c). IN HABEAS CONTEXT, PROCEDURAL DEFAULT IS NORMALLY A DEFENSE THAT THE STATE IS OBLIGATED TO RAISE AND PRESERVE IF IT IS NOT TO LOSE THE RIGHT TO ASSERT DEFENSE THERE AFTER. 28 U.S.C.A., GRAY V. NETHERLAND, 116 S.CT 2074 AND JENKINS V. ANDERSON, 100 S.TH 2124, 2127. (1980).

(d). THIS COURT IS UNAWARE OF ANY PRECEDENT STATING THAT A HABEAS COURT MUCH RAISE A MATTER WHERE THE STATE ITSELF DOES NOT DO SO. P. 480.

(e). THE DISTRICT COURT REFUSED TO ISSUE THE WRIT. TREST APPEAL TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT WHICH RULED AGAINST HIM ON THE GROUND OF PROCEDURAL DEFAULT. THE PARTIES THEMSELF HAD NIETHER RAISED NOR ARGUE THE MATTER

show the fundamental miscarriage of justice would result from the failure to entertain claim. Mr. Napper believe his case raises the type of standard of fundamentalness of his miscarriage of justice that excuse successive writ to his actual innocnce claim. INNOCENCE CLAIM. Also, in Murray v. Murray, Mr. Napper contends like in Muray, that when the constitution violation has proably resulted in the conviction one who is actually innocence, (A FEDERAL HABEAS COURT MAY GRANT THE WRIT EVEN IN THE ABSENCE OF A SHOWING OF CAUSE FOR THE PROCEDURAL DEFAULT.

In also the present isue the Southern DIstrict court has choose on its own to urged here a successive writ that niether the COURT OF CRIMINAL APPEAL NOR STATE TRIAL COURT OR THE DE FENDANT HAS NEVER RAISE THAT ISSUE. Mr.napper beg the question here as to why or how asking the COUrt of Criminal appeals court to make a ruling one one that had never been rule on in his last writ of habeas corpus, and they did, but never conplain of a successive writ. but now at this point would be considered wavied on their behalf, they had one bit at that apple here. Why do Mr.napper even have to address ths issue.

In Mr. Napper motion here for reconsideration, he consistently recited facts allegation that give rise to the constitutional claim undr brady and actual innocence claim. See Quinn 337 F. Supp 2d. 99 (2008), under Fed. R. Crim. P. 33 (A), A court may vacate any judgment and grant a new trial if the interest of the justice so requires. And rule 33 Motion requires a close analysis of the government is discision-making at various times.

Also, Again see U.S v. Quinn, 537 F. SUpp.2d 99 (2008). Mr. Napper contends like in Qinn pending motion before he court for a new trial file pursant to federal rule of criminal procedures 33. and 33(A) (1). That the government suppressed material evidence in violation of a Brady V. Maryland, 373 U.S. 83, 83 S.ct 1194, (1963) THAT GOVERNMENT ALLOWED FALSE TESTIMONY OF A WITNESS TO GO UNCORRECT IN VIOLATION OF NAPUE V. ILLNOIS, S.CT. 1173, (1959), AND MR. NAPPER CONTENDS THAT THE SAME PROSECUTOR CONVICTED HIM ON DESTROED EVIDENCE, THAT HE WAS NOT GIVEN THE OPPORTUNITY TO DO A INDEPENDENT TEST ON, BECASUE THE EVIDENCE WAS DESTROYED AT A TIME THAT THE STATE KNEW THE EXCULPATORY VALUE

OF THE EVIDENCE AND HE COULD NOT POINT OUT ACTUAL PERSON WHO COULD HAVE COMITED THIS CRIME.

Again, Napper like in Mccleskey V. Zant, 11.ct 1454 (1991), the district court was wrong for dismissing his petiton without hearing on the sole ground that the claim was not raised in one of his habeas action. This court reversed and remind, [REASON THAT THE DISMISSAL PRECLUDES A PROPER DEVELOPEMENT OF THE ALEGEDLY ABUSE USE OF THE HABEAS CORPUS WRIT AND NOW HIS MOTION ASKING PERMISSION TO REVIEW HIS MOTION.NOW FOR THERE LACK OF JURISDICTON OF HIM NOT FILING THE ISSUES FROM THE SOUTHERN ON TIM DISTRICT ON TIME], Asuming even if it was true or not, WITHOUT A PROPER REVIEW OF Mr. Napper MOTION FIRST TO SEE IF IN FACT THERE AS BEEN SUCH A VIOLATION, THERE CAN BE NO OTHER EXCUSE TO DENIED HIS MOTION FIRST. If in fact this court as well as the Southern District Court would have did this, than it could have gotten by with the required answering Mr. Naper Brady v. Marying and Actual innocence complain to move on to the nexts court, but niether court has done so.

See McKleskey, Mr. Napper condends without considering whether the petitioner had abused the writ, we remand the case. In Mccleaskey, emphasis Added, for cause to ecisit, the external impediment, whether it be gobernment (INTERFERNCE) or the reasoning unavialability of the factual basis for the claim must have prevented petitioner from raising the claim. See ID. AT 488 106 S.ct at 2645 [CAUSE IF THE INTERFERENCE BY OFFCIALS MADED INPRACTICABLE: Armde V. Zant, 108 S.ct 1771, 1776, (1988).

ISSUE NO. (2)

WHETHER THE UNITED STATE DISTRICT COURT JUDGE AND COURT OF APPEAL ABUSED ITS DISCRETION AND REVERSIBALE ERROR WHEN IN PETITIOR"S ORIGINAL AND TIMELY FILED FEDERAL HABEAS PETITION DUE TO HIS BRADY V. MARYLAND CLAIM DISMISS AS BEING SUCCESSIVE IN HIS REQUEST UP ON THAT COURT TO FILE ITS OWN MOTION WAS NOT SUCCESIVE.

Petitioner in his (Issue No. 2), claim and argue that U.S. District Court Judge Hon. Andrew S. HANEN, abused the court discrection, when it denied him Motion as being Successive by THE PRIVING HIM OF EQUAL PROTECTION UNDER THE LAW SUSPENSION OF

THE WRIT OF HABEAS CORPUS). When the Court Of CRIMINAL Appeal, Southern District, and Cort of Appeal dismissed and close out Mr. Napper Brady v. Maryland claim in regard to a (PROCEDURAL DUE PROCESS VIOLATION), Therefore, (INTERFERING) and (BLOCK_ ING) HIS RIGHT IN HIS PROIR ORIGINAL WRIT OF HABEAS Corpus by (TERINATION)OF HIS APPEAL ATTORNEY BY THE SOU- THERN DISTICT causing him the effective assistance of counsel that that court had appointed him from a Federal Publice OFFEND- ER OFFICE, and causing Mr. Napper not to complete further pelf over proceding of this present proceeding in two grounds of arror that was filed in the state district trial court but now want to cause his present motion an issue to be an successive writ. Lets keep in main here, that Mr. Napper trial Judge also remain him back into court on bench warrant with a recommendation for a new trial supported by the trial court evidence.

Althought the petitioner here cannot be challegging a prior merit, becasue it was never consider or file by the Court Of Criminal Appeal as was all his other ground of error. Mr. Napper Brady and Actual Innoccence claim was not invole in his (5)- Grounds of error, but should have.

STANDARD_OF_REVIEW:_

Procedural due Process direct that when a district court henies rule 60(b) Motion is require to obtain a COA appeal the denial of his rule 60(b) Motion. See CANALES v. QUARTERMAN, 507 F.3d 887, (5th Cir. 2007), to suceed on a rule 60(b) motion, the petitioner must not be challaengin a prior merit based ruling, 626 F.3d842, 846 (5th Cir.2010): Gonzales v.Crosby, 545 U.S. 524, L.ED.2d 480 (2005). Also, rule 60(b) motiom is not to be treated as a second or successive petiton. PHELPS v. ALAMEDIA 569 F. 3d.1120, (9th Cir. 2009).

Fedral Rule oF Civil Procedure, Rule 60(b) Motion for relief from judgment or orders allows party to seek reief from a final judgement or order by requestingreopening of thier habeas corpus under liminted set of circumstance including fraud, mistake and newly discovered evidence. LILJEBERG V. HEALTH SERVICE ACUISTON CORP, 108 Sc. 2194, (1988), Garcia V? Thaler, 793 F.SUPP 894, (W.D TEX. 2011).

If all of thse court would apply the exceptional rules to the so GENERAL RULES AS WELL, IT WOULD BE ABLE TO SEE IN Mr. Napper motion all of the following cases of these violation that refer to his trial distecourt Judge ruliing recommending him a new trial becasue the state court has finally decided that he could have not gotten a fair trial after all the dna ample aleged in connecting him to this crime was destroyed denying his constituional right to that evidence, and to independant have it tested by the defense who has clearly denied that those sample did notmatch him, but could have found the man who could have actually commented this crime. As for as the defense know, thier may have nevern been any sample in this case from thestart espescially if the state is saying that they ws his dna semen sperm swab. The victim makes this clear becasue he did not identify Mr. Napper in the present of his trial and the victim Mr. Eric Talton clearly testified at trial that he saw his victim all day and night.

Again Mr. Napper will show this court concerning his claim to Brady Violation if these court read his motion, non of these reason for denial of his motion can first make any excuse for any court to brake the constitution or provide a rule to allow any appeal court to excuse a defendant guaranteed right to any due process violation in the United State, even if it was a procedural defult; a failure to file in a court of appeals on or after time.

BRADY VS. MARYLAND CLAIM/EXCEPTIONS TO SUCCESSIVE WRIT RULE PROVISION

See Jean V. COLLINS, 221 F.3d 56, (4th Cir), When due process violation involes the thestate failure to provide a PROEDURAL SAFE GUARD, that comprises one element of a fair trial Suchas a right to exculpatory Evidnce, the concurrence thanks the REMDY is a new trial becasue of the constitutional injury can deprivation of liberty without due process of law. Mr. Napper the petitioner here condends like in jean, the harm that Jean endured was the deprivation of his liberty without due process of law, not merely the denial of the free standing procedural interest in him obtaining exculpatory evidence.

CONCLUSION/BRADY_VIOALTION_

DID_THE_STATE_COURT_HAVE_A_DUTY_TO_PRESERVE_EVIDENCE_ IN_ACCORDING_TO_BRADY_V._MARYLAND_CLAIM_WHICH_COULD ALLOW_THIS_COURT_TO_CONSIDER_MR._NAPPER_MOTION_NOT BEING_A_SUCCESSIVE_ONE_BECAUSE_THIS_SUCH_TYPE_OF_DUE PROCESS_VIOLATION_WILL

The petitioner reminds this court that they are not bound by the interpation not supported by the record in state ourt pleading but with respect to Section 2254 (d)(8), 28 U.S.C. 2254 (d) providing that a Federal Appeal's Court Circuit are not bound by a lower court interpetation of the relevent constitional law as the district court for dismissal of a petition successive writ or motion

(1). See ANDERSON V. STATE, 268 SW.2d 130, (TEX. APP. 2008)
   (a). IN ORDER TO HAVE A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE, ANDERSON SHOULD HAVE BEEN PERMITTED TIME TO INDEPENDENTLY EVAUATE THE DNA EVIDNECE AND TO PREPARE FOR THE CROSS EXAMINATION OF THE CHEMIST THAT WOULD BE TESTIFYING.

(2). See DAMN V. STATE, 88 SW.2d 102, (TEX. APP. 1994)
   (2). NAPPER CONTENDS THAT THE SUCCESSIVE RULE IS UNACEPTABLE, WHEN DUE PROCESS GUARANTEED UNDER OUR FEDRAL CONSTITUTION DEMAND THE STATE PROVIDE EXCULPATORY EVIDENCE TO THE ACCUSED REQUEST
   (B). NOR WAS THE PHYSICAL EVIDENCE EVER DELIVERED TO THE APPELLANT SO THAT HE COULD CONDUCT INDEPENDANT TESTING

(3). See THOMAS V. UNITED STATE, 343 F.2d 49, (9th CIR)
   (a). PROSECUTOR FAILURE TO DISCLOSE EVIDENCE EQUALLY AVAIABLE TO THE DEFENSE MAY CONSTITUTION OF A DUE PROCESS. SUCCESSIVE RULE DONOT APPLY FOR THIS CASE.
   (b). THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENMENT PROVIDE THAT NO STATE DENY ANY PERSON WITH IN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. U.S. CONST. AMEND. XIV. I, AND THIS INCLUDES BRADY BECAUSE BRADY IS A PROTECTED CLASS AND CLASS SAFE, 902 SUPP. 2d 501.
   WHICH IS AN EXCEPTION TO THE SUCCESSIVE RULE.

(4). See LEVIN v. KATZENBACH, 363 F.2d 287 (1996).
   (a). WHERE THE PROSECUTOR NO DOUBT AT OR BEFORE TRIAL AND INGOOD FAITH DID NOT DISCLOSE TO THE DEFENSE INFORFORMATION IN ITS POSSESION HAD SOME BEARING ON THE CASE WAS A DUE PROCES VIOLATION UNDER BRADY. THIS TYPE OF VIOLATION IS AN EXCEPTION TO THE SUCCESSIVE RULE OR ANY OTHER RULE.

(c). It is not as if the presence of a procedural default DE PRIVE THE FEDERAL COURT OF JURISDICTION], for this court has maded it clear that in the habeas context, a procedural default that is a critiicl failure to comply with the state procedural law (IS NOT A JURISDISTIONAL MATTER). Also ssee LAMBRIT V. SINGLETARY 117 S.ct 1517, COLEMAN 111 S.ct 2554-2555.

(d). The parties themself niether raised nor argue the procedural default issue in the court of Harris County District Court and nor was the given any opportunity from none of the appeals court to prepare for this arguement on the issue, However, all of these courts must have been under the opinion and the language in thier opinion suggested that it had thought that, once it had noticed the possibility of a procedural default, it was require to raise the matter on its own.

Mr. Napper further arguement is that he has the right to file his two claims in the lower court as we as the United State Supreme Court for this court to reverse itself.

(14). See SANDERS V. UNITED STATE, 83 S.ct 1068

(a). NO MATTER HOW MANY APPLICATIONS FOR FEDERAL RELIEF BY HABEAS COURPUS OR MOTION UNDER U.S.C 2255 A PRISONER HAD MADED, A SUBSEQUENT APPLICATION FOR SUCH RELIEF (CANNOT) BE DENIED ON THE GROUND THAT A PRIOR APPLICATION HAS BEEN PREVIOUSLY HEARD AND DETERMIND IF THE SAME GROUND WAS EARLIE PRESENTED BUT NOT ADJUICATED ON THE MERITS.

Mr. Napper two grounds was filed, but the court of criminal appeals back in 2012 in his prior writ of habeas corpus for now legal reason refuse to allow him to further filed them in his claim to be consider for review.

Also, 28 U.S.C 2255 is not require to in Sanders limit his decision on Mr. Napper's motion to grounds narraowly alleged, or deny the motion out of hand because the allegations are vague, conclusional, or inartitically expressed, (BUT IS FREE TO ADOPE ANY APPROPRIATE MEANS FOR INQUIRY INTO THE LEGALITY OF THE PRISONER'S DETENTION) INORDER TO ASCERTIAN ALL POSSIBLE GROUND UPON WHICH THE PRISONER MIGHT CLAIM TO BE ENTITLED TO RELIEF; THE DISPOSITION OF ALL SUCH GROUNDS MAY THAN BE SPREAD ON THE FILES AND RECORDS CONLUSIVELY SHOWTHAT THE PRISONER IS ENTITLE TO NO RELIEF ON ANY SUCH GROUNDS, NO HEARING ON A SECOND OR SUCCESSIVE MOTION IS ON SUCH GROUNDS.

Also see here in SANDERS V. UNITED STATE, The courts reasoned that it would be unfair to compel the Habeas Applicant, tipicalby (UNLEARNRD IN THE LAW AND UNABLE TO PROCURE LEGAL ASSISTANCE I DRAFTING HIS APPLICATION), to plead an elaborated negative.

Also in SANDERS V. UNITED STATE, THE (SNADERS COURT), STATES TO RENDER THE JUDGEMENT VULERABLE TO COLLATERAL ATTACT, THE COURT SHALL VACATE AND SET THE JUDGEMENT ASIDE AND SHALL DISCHARGE THE PRISONER OR RESENTENCE HIM OR GRANT A NEW TRIAL OR CORRECT THE SENTENCE AS MAY APPEAR APPROPRIATED.

(15). ALSO SEE HARVEY V. HORAN, 278 F.3d 370, (4th Cir. 2002).

(a). HARVEY RECIEVED A FAIR TRIAL AND WAS GIVEN THE OPPORTUNITY TO TEST THE DNA EVIDENCE DURING HIS TRIAL USING THE BEST TECHNOLOGY AVILABLE AT THE TIME.

(b). OUR SISTER CIRCUIT HAVE HELD THAT THE DISMISSAL OF A HABEAS CORPUS PETITION FOR PROCEDURAL DEFAULT IS A DISSMISSAL ON THE MERITS FOR PURPOSES OF DETERMINING WHETHER HABEAS PETITION IS SUCCESSIVE.

(c). HAVEY SEEK AS IN MR. NAPPER CASE TO SATISFY THIS REQUIREMENT BY CONTENDING THAT THE DENIAL OF HIS CONTITUTION IS A VIOLATION OF HIS RIGHT UNDER DUE PROCESS CLAUSE OF THE FOURTHEENTH AMENDMENT.

(d). THE DISTRICT COURT IDENTIFIED AND FOUND A DUE PROCESS DEPRIVATION UNDER BRADY V. MARYLAND 83 S.CT 1194, MOREOVER THE COURT FOUND THAT HARVEY HAS A DUE PROCESS RIGHT TO THE ACCESS TO THE EVIDENCE, AS SUCH EVIDENCE COULD HAVE CONSTITUTE MATERIAL EXCULPATORY EVIDENCE.

(e). THE BRADY RULE IS GROUNDED IN A DEFENDANT'S RIGHT TO A FAIR TRIAL. ALSO IT IS CLEAR THAT THE HABEAS IS AVAILABLE TO REVIEW ONLY JURISDICTIONAL DEFECTS, OR DENIAL OF ONES FUNAMENTAL OR CONSTITUTIONAL RIGHTS.

Mr. Napper also asking this court to keep inmind under OSNORME V. DIST. ATTORNEY'S OFFICE, 521 Fd 1118 (9th Cir. 2008), AND COULSON V. U.S, APP.LEXIS 30688, (2001), THAT WHILE BRADY ENSURES A FAIR TRIAL, THE DEFENANT"S RIGHT TO PRE-TRIAL DISCLOSURE UNDER BRADY IS NOT CONDITIONED ON HIS ABIITY TO DEMONSTRATE THAT HE WOULD OR EVEN PROABLY PREVAIL AT THE TRIAL IF THE EVIDENCE WERE DISCLOSED, AND THAT COULSON ENSURE IN BRADY CLAIM, THAT TEST FOR MATERIALITY IS NOT A SUFFICIENCY OF THE EVIDENCE TEST. AlsoMr. Napper contends like in KOWALK V. SCUTT, 712 F. SUPP. 2d 657, 2009, and noted under YOUNGBLOOD, the question is not whether the police was motiavated by badfaith as the trial courts in Napper case is claiming, but motiavated by badfaith as to whether the particular ITEMS of evidence (NOT MAINTAINED) by the state was destroyed in badfaith.

The petitoner Mr.Napper also lead this court to be remian, the movant argue that he is innocence of this charges for which he

was imprisoned for, and the records and documents on file are judicially noticeable prosuant to rule 201 Tex. R. Evid. and will establish movant Actual Innocence.

As I have concluded here by showing some of the cases which are clearly exceptions to the default Judgements rules if in fact one has be eshablish by any of the lower courts ruling without first reviewing Mr. Napper motion.

The bottlemline here, Federal Court retain the authority to issue this petitioner motion in cases of (FUNDAMENTAL MISCARRIAGE OF JUSTICE). If the petitioner canot show cause cause the failure to raise claim in an earlier petition or if (RAISING THE SAME CLAIM THAT WAS NOT ADUICATED) on the merit, petitioner amy never-- theless be excuse if he or she cannot show that a fundammental miscarriage of justice would result from a failure to entertain the claim. See MURRAY V CARRIER, 106 S.CT 2639 (1986)

Also in Murray, when a constitutional violation has proably resulted in the conviction of one who is actually innocence, a Federal Habeas Court (MAY GRANT THE WRIT OR MOTION EVEN IN THE ABSENCE OF A SHOWING OF CAUSE FOR THE PROCEDURAL DEFAULT.

CONCLUSION

The petitoner have attach EXHIBITS FROM (A) THUR (G)

This petition presents an ideal for analyzing the Brady v. Maryland and Actual Innocence, Pro Se Judicail notes to his claims.

Lawrence Napper rspectfully asks this court to grant a motion of certiorari.

Respectfully submitted this day of September 2020,

By: _____

LAWRENCE JAMES NAPPER, TDCJ #1080356
MICHAEL UNIT
2664 FM 2054
TENNESSEE COLONY, TEXAS 75886