No. 20-7159

IN THE

SUPREME COURT OF THE UNITED STATES

DANNY L. SMITH
(Your Name)
— PETITIONER

ORIGINAL

vs.

STATE of ALABAMA, et.al.,
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANNY L. SMITH, 176952, J-50-1A.
(Your Name)

28779 Nick Davis Road
(Address)

Harvest, Alabama 35749
(City, State, Zip Code)

(256) 515-2347 (contact only)
(Phone Number)

LIST OF PARTIES

[X] 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:

Smith v. State, 155 So.3d 1127, CR-11-1378, (Table)(Ala.Crim.App.2012).
Smith v. State, 155 So.3d 1127, CR-11-1377, (Table)(Ala.Crim.App.2012).
Ex parte Danny L. Smith, 162 So.3d 952, Ala.S.Ct.#1120438 (Ala.2013).
Ex parte Danny L. Smith, —So.3d— Ala.S.Ct.#1160150 (Ala.2017).
Ex parte Danny L. Smith, —So.3d— Ala.S.Ct.#1170411 (Ala.2018).

Danny L. Smith v. State of Alabama, No. 17-CV-01223-RDP-JEO, Judgment entered Feb.19,2020 (Magistrate-R&R) N.D.Ala.

Danny L. Smith v. State of Alabama, No. 18-CV-0688-MHH-JEO, Judgment entered Feb.19,2020, N.D.Ala.

Danny L. Smith v. State of Alabama, No. 20-10956-G, Judgment entered September. 2, 2020, (Appeal from N.D.Ala.).

Danny L. Smith v. State of Alabama, No. 20-10956-G, Judgment entered October. 27, 2020 (Motion to Reconsider, timely).

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TABLE OF AUTHORITIES CITED

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was October. 27, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October. 27, 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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).

QUESTION(S) PRESENTED

I. Whether or not the lower Courts' "decision" to "time-bar Petitioner's Claims of "Statutory tolling" was in "conflict" with 'Statutory Congressional intent' under 28 U.S.C.S. §2254 (d)(1) ?

II. Whether or not all lower Courts' "decision" to operate State Court Rule 32.1 (f), Ala.R.Crim.P., ("multiple judgments challenge Rule") is in "Conflict" with, Congressional intent under 28 U.S.C.S. §2254 (B)'s "impediment doctrine, and "contrary to" or "an unreasonable application" of federal law announced in Burton v. Stewart, 549 U.S. 147 (2007) on an identical set of facts ?

III. Whether or not the lower Courts "decision", was in "Conflict", with, other U.S. Appeal Circuit's "decisions" in applying federal law announced in Martinez v. Ryan, 566 U.S. 1, 9 (2012) ?

IV. Whether or not the lower Court's "decision", "conflicts" with other U.S. Appeal Circuit's "decision" in applying this Court's federal law announced in Davis v. United States, 417 U.S. 333 (1974) ?

GROUNDS: Petitioner claims the lower Courts' Rulings' are Repugnant to his U.S. Const. Amend. Right to 'effective counsel" under the "Sixth Amendment", and "due process" to a fair trial, and "States shall pass no Rules or laws, depriving him liberty without due process clause" under the "Fourteenth Amendment".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See attached:

Copies of:

U.S. Const. Amend. 6 _____ i)

U.S. Const. Amend. 14 _____ ii)

Rule 2 (d) Governing Habeas Corpus _____ iii)

28 U.S.C. §2244 (d)(2) _____ iv)

28 U.S.C. §2254 (d)(2) _____ v)

28 U.S.C. §2254 (B) _____ vi)

Rule 32.1 (f), Alabama Rules of Criminal Procedure ___ vii)

below;

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6 Rights of the accused.

In all criminal 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 committed, which district shall have been previously ascertained by law, and to be informed of the nature and 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 his defence.

Amendment 7 Trial by jury in civil cases.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 8 Bail—Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9 Rights retained by people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Note. —

The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several states by the eighth congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the secretary of state, dated the 25th of September, 1804, to have been ratified by the legislatures of three fourths of the states.

Amendment 13

Sec. 1. [Slavery prohibited.]
Sec. 2. [Power to enforce amendment.]

Sec. 1. [Slavery prohibited.]

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. [Power to enforce amendment.]

Congress shall have power to enforce this article by appropriate legislation.

Note. —

The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several states by the thirty-eighth congress, on the 1st of February, 1865, and was declared in a proclamation of the secretary of state, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six states, viz.: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

Amendment 14

ii)

Sec. 1. [Citizens of the United States.]
Sec. 2. [Representatives—Power to reduce apportionment.]
Sec. 3. [Disqualification to hold office.]
Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.]
Sec. 5. [Power to enforce amendment.]

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Sec. 2. [Representatives—Power to reduce apportionment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to

Editor's notes.

Proposed amendments to Rule 5 were pending approval at the time of publication. If approved, the amendment will take effect December 1, 2019 and will appear in the 2020 edition of Alabama Rules Annotated. Prior to that publication, approved rule amendment text will be available on lexisadvance.com.

Cumberland Law Review.

Eleventh Circuit: Survey of recent decision: VI. Criminal law and procedure. 29 Cumb. L. Rev. 255 (1998).

Rule 1. Scope.

(a) Cases Involving a Petition under 28 U.S.C.S. § 2254. These rules govern a petition for a writ of habeas corpus filed in a United States district court under 28 U.S.C.S. § 2254 by:

(1) a person in custody under a state-court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States; and

(2) a person in custody under a state-court or federal-court judgment who seeks a determination that future custody under a state-court judgment would violate the Constitution, laws, or treaties of the United States.

(b) Other Cases. The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).

Rule 2. The Petition.

(a) Current Custody; Naming the Respondent. If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.

(b) Future Custody; Naming the Respondents and Specifying the Judgment. If the petitioner is not yet in custody — but may be subject to future custody — under the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgment was entered. The petition must ask for relief from the state-court judgment being contested.

(c) Form. The petition must:

iii)

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 USCS § 2255].

(b) (1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive

iv)

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

HISTORY:

Act June 25, 1948, ch 646, 62 Stat. 965; Nov. 2, 1966, P. L. 89-711, § 1, 80 Stat. 1104; April 24, 1996, P. L. 104-132, Title I, §§ 101, 106, 110 Stat. 1217, 1220.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

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

v)

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

HISTORY:

Act June 25, 1948, ch 646, 62 Stat. 967; Nov. 2, 1966, P. L. 89-711, § 2, 80 Stat. 1105; April 24, 1996, P. L. 104-132, Title I, § 104, 110 Stat. 1218.

v)

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 USCS § 2255].

(b) (1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive

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application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

HISTORY:

Act June 25, 1948, ch 646, 62 Stat. 965; Nov. 2, 1966, P. L. 89-711, § 1, 80 Stat. 1104; April 24, 1996, P. L. 104-132, Title I, §§ 101, 106, 110 Stat. 1217, 1220.

vi)

Rule 32.1. Scope of remedy.

Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that:

(a) The constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

(b) The court was without jurisdiction to render judgment or to impose sentence.

(c) The sentence imposed exceeds the maximum authorized by law or is otherwise not authorized by law.

(d) The petitioner is being held in custody after the petitioner's sentence has expired.

(e) Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

(1) The facts relied upon were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to file a posttrial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence;

(2) The facts are not merely cumulative to other facts that were known;

(3) The facts do not merely amount to impeachment evidence;

(4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and

(5) The facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that the petitioner received.

(f) The petitioner failed to appeal within the prescribed time from the conviction or sentence itself or from the dismissal or denial of a petition previously filed pursuant to this rule and that failure was without fault on the petitioner's part.

A petition that challenges multiple judgments entered in more than a single trial or guilty-plea proceeding shall be dismissed without prejudice.

(Amended 3-22-02, eff. 8-1-02; Amended 1-13-05, eff. 6-1-05.)

vii)

STATEMENT OF THE CASE

In 2006, Petitioner was charged by Alabama authorities with case no. CC-06-0269, while on bond in that case, he was charged by the by the same authorities with "6" more case no.: (s), CC-07-41, CC-07-784.01, CC-07-784.02, CC-07-785, CC-07-786, CC-07-787, a total of "5" Five felonies, and "2" Two misdemeanors.

On August. 7, 2008, upon counselled advice, Petitioner entered a 'plea-agreement with the State, "PROOF" of these facts exist before this High Court (see APPENDIX-E, below, facially at top Right Corner labels all "7" case no.(s): above), additional "PROOF" to this High Court exists (at APPENDIX-E, at R.383,) that Petitioner was "Sentenced" simultaneously upon entering the Plea by the State trial Judge, he stated: "[L]et the Record Reflect that I --- will sentence pursuant to the plea agreement entered into by the partie[s]", all lower courts', even this trial judge chose to totally IGNORE this substantive Record while "time-barring" all of Petitioner's Rule 32 Claims he filed "pro se"; also, "waiver" of appeal is included in APPENDIX-E's agreement, hence, Petitioner took no direct appeal Review. [1]

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1. State law Rule 32.1(f), Ala.R.Crim.P., Commands: "A petition that Challenges multiple judgments entered in more than a single --- guilty-plea proceeding shall be dismissed without prejudice": Incredibly, all lower Courts' found Petitioner had "2" seperate "judgments", hence "[multiple judgments], Requiring he file "2" Sepeeate Rule 32 petitions" for each judgment entered, this is not true, and is the heart of this Cert, Request inter-alia.

This Record proves Petitioner's "judgment" was entered on August. 7, 2008 to all "7" Seven charges during a "SINGLE guilty-plea proceeding", and was a "final single judgment" (at APPENDIX-E, R. 383) by the trial Court's pronouncement of the "sentence" "[p]ursuant to the plea-agreement", and this High Court holds this same as federal law in Burton v. Stewart, 549 U.S. 147 (2007), "[j]udgment in a Criminal Case means sentence", the Law in Alabama holds this same legally binding conclusion, see Ex parte Kelley, 246 So.3d 1068, 2015 Ala. LEXIS 146, 113145) (Ala. Nov. 6, 2015), id. at 1071-1072; "judgment means sentence!",[2]

APPENDIX-B, below at Document #:16-1, p. 2 of 6, holds "A petitioner is permitted to challenge multiple judgments in a single petition under Rule 2 (d) of the Rules Governing Section 2254 Cases"), yet, in total contradiction to this law, the District Court "time barred" Petitioner's "timely filed" Rule 32 petition, see APPENDIX-B, Doc#: 34-1, p. 16 of 47, "Smith's first state petition for collateral review was "timely filed" for purposes of tolling the statute of limitations for 28 U.S.C. §2244(d)(2), compare at p. 9 of 47, ANALYSIS "A. Claims which are procedurally defaulted", I-V., the

2. In time barring Petitioner's Rule 32 state proceedings, the State, the Federal District Court, and the Eleventh Circuit Opined Contrary to this Court in Burton, finding the state trial judge was correct in denying Rule 32 relief on ground application of Rule 32.1(f), A.R.Cr.P., i.e., Petitioner had "7" Seperate convictions, and must file seven Rule 32's, in the "multiple judgments" state Rule, see n.1 above. Rule 32.1(f), A.R.Cr.P., also prohibits "jurisdiction" of a state Court's merits Review, hence it functions "contrary" to the Burton Rule for federal jurisdiction" — §2254 gatekeeping.

District Court's most glaring fallacy in applying the "time bar" of cited Claims above, exist as evidence against the District Court and Eleventh Circuit. As applied this Court's law of Bryton supra, different than other Courts' it stands against the Statutory tolling doctrine itself under 28 U.S.C. §2244(d)(2), as the District court opined: "Both Smith and the respondents set forth extensive arguments on Statutory tolling. ... these arguments only implicate the timeliness of the petition here, the application of which allows the Court to address the claim on their merits. Rather than engage in an extensive analysis of the timeliness of Smith's §2254 petition..., the undersigned addresses the claims based on the posture in which they were presented in State courts. In doing so, the undersigned "[m]akes no findings on the timeliness of the petit[ion]", (quoting verbatim APPENDIX-B, Doc#:34-1 at p. 10 of 47, at n. 13. Hence, Petitioner's Claims of I. The Petitioner is Entitled to Statutory and Equitable Tolling, II. Rule 32.1(f) is Unconstitutional as Applied and thus Petitioner is Entitled to Statutory or Equitable Tolling, IV. The Guilty Plea was not Voluntary Because of Ineffective Counsel, and The Convictions for Assault are Unconstitutional and Counsel was Ineffective for Failing to Raise This", are all "time barred" contrary to federal law in Bryton, 28 U.S.C. §2254(d)(2), and §2244(d)(2), and Rule 32.1(f) "impedes" unconstitutionally under 28 U.S.C. §2254(B), because all merits are still pending.

Here, even after admitting "Smith's first petition ... was [timely] filed", the lower Courts' admitted it "would make no findings on the timeliness of the petition" under 28 U.S.C. §2254 (d)(1) or (2) or (B), even though Petitioner's arguments would "allow the Courts to adress the above Claims on their merits", (APPENDIX - B, Doc#: 34-1, at p. 9 of 47, ANALYSIS - A. Claims which are procedurally Defaulted")]. At the heart of this issue in "conflict" of uniform Nationwide application of law is embeded in the text of the District Court, it stated: "[F]ederal Court[s] will not Review the merits of Claims including Constitutional Claims that a State Court declined to hear "[because the prisoner failed]" to "[abide by]" a State Procedural Rule." ... "Where the state court "[correctly applies]" a procedural default principle of State law to "ARRIVE" at the conclusion that the petitioner's federal Claims are barred, the federal Court must Respect the State Court's decision") (quoting verbatim in part APPENDIX - B, at p. 11 of 47, this Ruling cannot stand in light of Petitioner's above "evidence" to this High Court, (See APPENDIX - E, at Plea Agreement document, at top Right corner listing "7" Case no(s), and at APPENDIX - E, R. 383, proving all "7" Cases/Convictions means "a single sentence judgment", and Rule 32.1, allowed Petitioner to "file his first timely single rule 32 petition", as he did correctly [abide by] the State procedural Rule, and [the state court] erroneously applied State law, Rule 32.1 (f), Ala.R.Cr.P., - and in this,

the Rule of Burton was applied by the lower courts' differently than the "Ninth Circuit Court of Appeals, and proves the law is in "conflict" being applied in California vs. Alabama's Eleventh Circuit, where in, Carey v. Saffold, 536 U.S. 214 (2002), this Court would Require both California and Alabama Courts to "[l]ook to how" a state procedure functions ... for purposes of federal jurisdiction".

QUESTION:

> Does Alabama create a laws, and operates same Rule 32.1 (f), Ala.R. Crim.P., that undermines §2254, §2244 gatekeeping clause "meaningful, and adequate Review" repugnant to U.S. Const. Amendment. 14's prohibition that: "No state shall make or enforce any law which shall abridge"... to deprive any person of life, liberty) See Sec. 1. U.S.C. 14. ?

Here, Alabama has been allowed to operate a state procedural law "in conflict" with how federal law demands, this law is applied different by the Eleventh Circuit in Atlanta, Georgia than California.

II.

Additionally, Petitioner applied this High Court's application of federal law in Martinez v. Ryan, 566 U.S. 1, 9 (2012), "applying gateway" around procedural default applications of States, where it is shown in this case your Petitioner "had no post collateral counsel", and because Alabama

has supplied only a Rule 32 petition as an avenue to air his "ineffective-assistance-of-counsel claims", and the lower Court's have "time barred" those claims, the claims have now totally escaped any State or federal Review, (APPENDIX - B, Doc#:34-1, at p.9 of 47, ANALYSIS A. Claims which are Procedurally Defaulted), such Review denials was the touchstone Reasoning of this High Court's decision in Martinez, even though Petitioner correctly set this issue before the district court, and U.S. Court of Appeals for the Eleventh Circuit, those courts ignored this applied law of this Court, it is Reasonable to say the Eleventh Circuit always denies all Alabama prisoners acess to Martinez qualifying cases, while allowing Georgia, and Florida's prisoner's acess, hence, this Court should take up this matter in this case on the issues to "apply" this Court's law evenly ACROSS the Nation, and stop the Eleventh Circuits arbitrary applications to other prisoners on a same set of facts, and issues, against other Circuits, even its sister Circuit in the Fifth Circuit allows Martinez Reviews while the Eleventh Circuit rejects Alabama prisoner's acess to this Court's Constitutional Rule of federal law.

REASONS FOR GRANTING THE PETITION

This Court should take cognizance of this Case, it is more than compelling the lower Courts' have applied the law of this Court in "conflict" with other State, federal, and U.S. Courts of Appeal Circuits, as set out above, it is the jurisdiction of this Court to settle such error, conflicts, and disputes where one State may apply the laws differently, or provide arbitrary acess to this Court's Rulings, while solely denying Alabama prisoner's, it is important to all prisoners nationwide and Alabama it can depend on this Nation's High Court to Remain the sole arbitor in such cases, the Record provides sufficient Reasons to evenly apply federal law Respecting Rule 2 (d) Governing Habeas Corpus, §2244, and §2254 (d)(2), §2254 (B)'s 'Statutory tolling laws, and "impediment" to filing laws, where Alabama has passed State Rule 32.1 (f), Ala. R. Cr. P., contrary to and Repugnant to the U.S. Const. Amend. 14's due process Clause, the State Court Clearly erroneously applied and deployed Rule 32.1 (f) in a manner "conflicting" with this Court's Rulings, those similarly situated will be unjustly affected also unless this Court upholds the laws of the Nation, evenly applied, your Petitioner prays.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Danny S. Smith

Date: 1-18-2021 pursuant to the prisoner mailbox Rule, I certify that on this date undersigned above I handed this document for mailing to prison officials, postage pre paid to the United States Supreme Court addressed proper.