

No. _____

20-7261

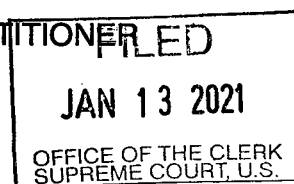
IN THE
SUPREME COURT OF THE UNITED STATES

RANDELL REDMON
(Your Name)

— PETITIONER

VS.

LORIE DAVIS — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RANDELL JOSEPH REDMON
(Your Name)
LEBLANC UNIT # 00727110
3695 FM 3514
(Address)

BEAUMONT, TX. 77705
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

In the extremely rare cases where a Federal Court of Appeals' decision is adverse to an accused who eventually had his Rule 60(b) motion mischaracterized and dismissed as a second or successive federal habeas corpus petition by a federal district court without an evidentiary hearing, ...:

- 1) Did the circuit judge of the Fifth Circuit err by deciding a motion to proceed after sanction, not properly before the court, to justify denying a C.O. H.
- 2) Has the Supreme Court of the United States reversed its decision in *McDuggins v. Perkins*, 133 S. Ct. 1924 and *Schlup v. Delo*, 115 S. Ct. 851.... Where this Court decided, is offered only to bring the accused's claim to be innocent of a crime of which he was convicted within this narrow classification, is not itself a constitutional claim, and instead, is a gateway through which the accused must pass to have his otherwise barred constitutional claims considered on the merits.
- 3) Has the Supreme Court reversed its own precedent in *Buck v. Davis*, 137 S. Ct. 759 (2017); *Trevino v. Thaler*, 133 S. Ct. 1911 (2013) and *Martinez v. Ryan* 566 U.S. 1 (2012).
- 4) Does the Supreme Court in *United States v. Frady*, 456 U.S. 152, violate the equal protection of law...

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:

*THE RESPONDENT(S) HAS NOT BEEN SERVED OR
ISSUED AN ORDER TO SHOW CAUSE...*

RELATED CASES

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TABLE OF AUTHORITIES CITED

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- (1) *Buck v. Davis*, 137 S.Ct. 759
- (2) *Martinez v. Ryan*, 132 S.Ct. 1309
- (3) *McQuiggins v. Perkins*, 133 S.Ct. 1924
- (4) *Schup v. Delo*, 115 S.Ct. 851

(cont. on next page)

STATUTES AND RULES

Supreme Court Rule 12.7

Fed. R. Crim. P. 52(b)
Rule 60(b)

28 U.S.C. § 2244

28 U.S.C. § 2254

OTHER

Newly Discovered Evidence

Cases cont.

- (5) Blue v. Thaler, 133 S.Ct. 105 (2012)
- (6) Cone, 129 S.Ct. 1769 (2009)
- (7) Matthew v. U.S., 108 S.Ct. 883 (1988)
- (8) Miller-El v. Cockrell, 537 U.S. 322 at 337
- (9) Spitznagel v. Boone, 464 F.3d 1213
- (10) Standard Oil Co. v. U.S., 97 S.Ct. 31
- (11) Strickland v. Washington, 104 S.Ct. 7652
- (12) Trevino v. Thaler, 133 S.Ct. 1911 (2013)
- (13) United States v. Correa Ventural, 6 F.3d 1070
- (14) United States v. Frady, 456 U.S. 182
- (15) United States v. Rubio, 634 F.2d 442
- (16) Washington v. Texas, 388 U.S. 14

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 A 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 H to the petition and is

☐ reported at This is a docket sheet; 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 _____ 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 _____ 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 Nov. 05, 2020.

☒ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec. 24, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The questions presented implicate the following provisions of the Constitution of the United States and the United States code.

The First Amendment: Congress shall make no law... abridging ... the right of the people... to petition the Government for redress of grievances.

The Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime... without due process of law...

The Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to... have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Fourteenth Amendment: Sec. 1... 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 law.

28 U.S.C. § 2253 (c)(1)(B): "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from... the final order in a proceeding under Section 2254."

continue

28 U.S.C. § 2254 (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.

STATEMENT OF THE CASE

- 1) On 07-12-19, Mr. Redmond discovered new evidence App. "G."
- 2) After Article 11.07 was dismissed, Mr. Redmond filed Motion for Authorization on 1-29-20 which was reinstated on 2-06-20 in case no. 18-50813. Actual Innocence claim.
- 3) On 2-13-20, the Fifth Circuit dismissed Motion.
- 4) On 6-29-20, Mr. Redmond filed a Rule 60(b) Motion.
- 5) On 7-02-20, Mr. Redmond's Rule 60(b) Motion was mischaracterized as a Memorandum in Support for Writ of Habeas Corpus. See docket sheet page 2 #2. App. "H."
- 6) On 7-23-20, Memorandum in Support was dismissed and a certificate of appealability denied #6
- 7) On 7-27-20, filed notice of appeal in case no. 5:20-cv-00803-OLG.
- 8) On 8-03-20, district judge dismissed Motion to Consider plain error and IFP on appeal.
- 9) On 8-12-20, Circuit Clerk gave notice that any submissions which do not provide proof of payment of sanction will be dismissed without notice.
- 10) On 8-20-20, filed Certificate of Appealability. No. 20-50635.
- 11) On 11-05-20, the Fifth Circuit Court of Appeals mischaracterized and dismissed Mr. Redmond's certificate of appealability as a Motion to Proceed after sanction. See App. "I" case no. 20-90037.
- 12) Mr. Redmond was sanctioned an additional \$100.

REASONS FOR GRANTING THE PETITION

1. [Question One] Did the circuit judge of the Fifth Circuit err by deciding a motion to proceed after sanction, not properly before the court, to justify the denial of a C.O.A.

A. The circuit judge improperly sidestepped the C.O.A. process by denying relief based on its view of improperly filed motion.

In reviewing the facts and circumstances of Mr. Redmond's case, the Fifth Circuit sidestepped the threshold C.O.A. process by first deciding a Motion to Proceed after Sanction, in essence mischaracterizing the certificate of appealability. See Order of Circuit Judge Stephen A. Higginson - App. "A" and advisory letter - App. "B".

The Supreme Court should address the deceitfulness of the Fifth Circuit's continual practices of advising appellants that an appeal was already decided* and closed long past the time-limit (14 days) to file for a rehearing.* See App. "B".

As the Supreme Court held in Miller-El, the threshold nature of the C.O.A. inquiry "would mean very little if appellate review were denied because the prisoner did not convince a judge, ... that he or she would prevail." Miller-El V. Cockrell, 537 U.S. 322 at 337.

Mr. Redmond filed a motion in the Fifth Circuit seeking a certificate of appealability, so that he may appeal the

district court's mischaracterization of his Rule 60(b) Motion as a memorandum and dismissal as a "successive" § 2254 motion; ~~moreo~~, denial of a certificate of appealability.

The Fifth Circuit on its own initiative filed said MOTION TO PROCEED after Sanction, stating in its order that it was Redmond who filed it; Sanctioned Redmond for filing said motion; then used order in case no. 20-90037 to decide the C.O.A.. Even though Redmond sent a letter to the clerk of the Fifth Circuit on October 22, 2020, notifying a change of address; the clerk sent order to Redmond's prior unit. The order is dated November 05, 2020. Redmond received it on December 03, 2020. The case was closed on November 18, 2020; which is the time-limit in which to ~~file~~ file for rehearing. Mr. Redmond filed ON MOTION FOR EXTENSIONS OF TIME TO FILE PETITION FOR REHEARING AND REHEARING EN BANC - 12-06-20. And filed actual Petition for rehearing and rehearing en banc on 12-14-20, certificate of Service.

Mr. Redmond received a letter dated December 24, 2020, from the clerk of the Fifth Circuit Court of Appeals stating that no action will be taken on his petition for rehearing until he satisfy the outstanding sanctions. See App. OC."

Herein; Mr. Redmond was denied his First Amendment right to petition the Government

II. [Question Two] Has the Supreme Court of the United States reversed its decision in *McDuggin v. Perkins*, 133 S.Ct. 1924 and *Schipp v. Delo*, 115 S.Ct. 851... Where this Court decided, is offered only to bring the accused's claim to be innocent of the crime of which he was convicted within this narrow classification, is not itself a constitutional claim, and instead, is a gate-keep through which the accused must pass to have his otherwise barred constitutional claims considered on the merits.

A. It was the clerk's office, acting as an administrative of the Fifth Circuit of the court of appeals who decided that presenting Mr. Redmond's C.O.M. to the Court for a ruling was unnecessary; thus, initiating an improper Motion to Proceed after sanction. See App. "D."

Redmond's primary cause of his factual innocence claim is that trial counsel, Thomas H. Morris, III, failed to develop the expertise testimony of twenty-one orthopedic surgeons, willing to give favorable evidence about Redmond's disability as a defense at trial. See App. "E" - Names of the 21 orthopedic surgeons.

Rule 12.7. Redmond, herein, cite and/or quote record.

8.
Trial Counsel caused a conflict of interest when he approached Trial Judge Dwight E. Peschal with his findings instead of Mr. Redmond. The two were derelict in finding an

inexperienced chiropractor to testify about her lack of experience concerning the subject matter. See S.O.F. p. 31 L. 18-20 and Page five (5) of Rule 60(b) Motion.

Counsel admitted in open court that he and trial judge made a mistake in doing this. S.O.F. p. 32 L. 1-6.

It was Mr. Redmond's own counsel who introduced damaging testimony in the nature of an admission against interest, more likely to be taken at face value. See *Buck v. Davis*, 137 S. Ct. —, 197 L.Ed.2d, at 19-20 (2017).

On August 23, 1995, Mr. Redmond was convicted of murder and sentenced to 70 years. On August 21, 1997, his conviction was affirmed in the Thirteenth Judicial District Court of Appeals.... Then entered a labyrinth of state and federal collateral review, where it has wandered for more than a quarter century.

Mr. Redmond filed an affidavit demonstrating the steps that he'd taken while trying to obtain testimony of qualified expert witnesses; even requesting for appointment of counsel in the Fifth Circuit of the Court of Appeals. Circuit Judges Higginbotham, Jones, and Prado denied his motion and sanctioned him in the amount of \$100. See App. "F"

NEWLY DISCOVERED EVIDENCE - App. "G" (4 pages)

1) On July 9, 2019, Mr. Redmond made a request to speak to

a psychologist to ask a professional question about someone's mentality with his disability during a physical altercation. (pg. 2 of Correctional Managed Health Care Mental Health Outpatient Services).

- 2) On or about July 12, 2018, Mr. Redmond had an interview with Mental Health Clinician: MA, Freeman, Anthony W. and discussed his case in detail in connection to his medical disability: When someone is fighting, can that affect their psychological health and would they react more intensely when fighting out of fear that their shoulder(s) will dislocate. (pg. 3 of App. G).
- 3) In the words of MA, Freeman, Anthony W., "It was your disability that made you do what you did."
- 4) The Mental Health Clinician made an assessment: DSM-5 diagnosis: Summary of Clinical findings: From what he (Redmond) described it is possible for someone to react in that manner. (pg. 4 of App. G).
- 5) MA, Freeman works for the same State that has Mr. Redmond incarcerated at the Polunsky Unit in Livingston.

Prior to filing a Rule 60(b) Motion in the District Court, Mr. Redmond filed a Motion for Authorization to file a second or successive § 2254 petition by making a prima facie showing that he satisfy either of the two conditions found in 28 U.S.C. § 2244(b)(2):

A. that your claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; or,

B. the factual predicate for your claim could not have been discovered previously through the exercise of due diligence, and the facts underlying your claim, if proven by clear and convincing evidence, would be sufficient to establish that, but for constitutional error, a reasonable trier of fact would not have found you guilty of the underlying offense.

Mr. Redmond made the requisite showing because his case (No. 18-50813) was reinstated on February 06, 2020. The Fifth Circuit Court's clerk used the same sanction Mr. Redmond overcame to dismiss it.* Mr. Redmond was notified on March 18, 2020, that this case was dismissed February 13, 2020.*

Mr. Redmond had no other remedy of law than to file a Rule 60(b) Motion; which states: On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misconduct, or misrepresentation of an adverse party; (4) that the judgment is void; (5) that the judgment has been satisfied; or (6) any other reason justifying the grant of relief from the judgment.

Case no: 5-20-CV-00803-DLG

Mr. Redmond's invocation of *McDuggins* and *Schup* succeeds because he points to new evidence in light of which no juror, acting reasonably, would have voted to find him guilty. Mr. Redmond did not file or attach a Memorandum in Support. But; Chief Judge Orlando L. Garcia mischarac-

terized Mr. Redmond's Rule 60(b) motion as such. See the U.S. District Court Civil Docket Text # 2-App. "H"

On July 23, 2020, the chief judge dismissed said Memorandum in Support; vacated motion to proceed in forma pauperis; and denied a certificate of appealability. The district judge dismissed Mr. Redmond's Rule 60(b) motion, in his order, as a "successive" § 2254.

Mr. Redmond has met several of the Rule 60(b) factors showing that he is entitled to relief from judgment. The district court's determination to dismiss Mr. Redmond's Rule 60(b) motion rested on failing to resolve his claims.

The Tenth Circuit determined that district court improperly characterized true Fed. R. Civ. P. 60(b) motion as second or successive petition, Court will ordinarily remand to permit district court to address true Rule 60(b) issues in first instance, ... *Spitznagel v. Boone* (10th Cir.) (2006), 464 F.3d 1213.

Chief district judge erred in determining that appellate leave was required. The Supreme Court decided that appellate leave is not required before Federal District Court may reopen case which has been reviewed on appeal in order for District Court to entertain motion under Rule 60(b) for relief from District Court's judgment. 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed. 2d 21. *Standard Oil Co. v. U.S.*

Mr. Redmond's case is similar to *Buck v. Davis*, in that it was error to deny a prisoner a C.O.A. to pursue his Sixth Amendment claims on appeal where he demonstrated ineffective assistance when his attorney called an expert witness to introduce damaging evidence in the nature of an admission against interest, more likely to be taken at face value. *Id.* —, 197 L.Ed.2d at 19-20, (2017).

Mr. Redmond moved to the Fifth Circuit Court of Appeals for a certificate of appealability. In the recent Supreme Court case *Buck v. Davis*, 580 U.S. 137 S.Ct. 197 L.Ed.2d 1, (2017) the Supreme Court held that the Fifth Circuit exceeded the limited scope of the C.O.A. analysis. The C.O.A. statute sets forth a two-step process: (1) an initial determination whether a claim is reasonably debatable, and then if it is an appeal in the normal course.

As the chief district judge, improperly characterized Mr. Redmond's Rule 60(b) motion as a memorandum in support, the circuit judge improperly characterized Mr. Redmond's motion for issuance of a certificate of appealability as a motion to freeze after sanction, thus sidestepping the C.O.A. statute two-step process.

The newly discovered evidence proves that Mr. Redmond reacted intensely because of his disability. For that reason, he is actually innocent of murder after being attacked by the deceased, Danny P. Armelin. The Supreme Court decided in *McAuliffe v. Perkins*, 185 F.3d 1019, 13.

Actual innocence, if proved, held to be gateway through which state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28 U.S.C. § 2244 (d)(1)'s limitation period.

The United States Supreme Court has applied the miscarriage of justice exception to overcome various procedural defaults. These include "successive" petitions asserting previously rejected claims, "abusive" petitions asserting in a second petition claims that could have been raised in a first petition, failure to develop facts in state court, and failure to observe state procedural rules, including filing deadlines. *McQuiggin v. Perkins*, 135 L.Ed.2d 1021.

The Fifth Circuit of the Court of Appeals' stance is that prisoners must overcome monetary sanctions in order to have their certificate of appealability presented to the court for consideration.

Herein: Mr. Redmond was forced to answer for the crime of murder without the fifth, sixth, and fourteenth Amendment right of due process of law; the equal protection of the laws; compulsory process for obtaining witnesses in his favor; and adequate assistance of counsel for his defense.

III. [Question Three] Has the Supreme Court of the United States reversed its own precedent in *Buck v. Davis*, 137 S.Ct. 759 (2017); *Trevino v. Thaler*, 133 S.Ct. 1911 (2013); and *Martinez v. Ryan*, 566 U.S. 1 (2012). Where this court decided that a procedural default would not bar a claim of ineffective assistance of trial counsel proceeding was the first place to challenge a conviction on ground of ineffective assistance.

A. The Fifth Circuit of the court of appeals has procedurally barred Mr. Redmond from raising ineffective assistance of counsel claims because of "successive" and "abusive" petitions.

Mr. Redmond's trial counsel was appointed to represent him on direct appeal. As demonstrated in the second ground, trial counsel was ineffective. Mr. Redmond was not advised that trial counsel would not file ineffective-assistance-of-counsel against himself. When the court decided Mr. Redmond's case in the initial-review collateral proceeding, Mr. Redmond had no counsel.

The Supreme Court held that when a state formally limits the adjudication of claims of ineffective assistance of trial counsel to collateral review, a prisoner may establish cause for procedural default if (1) 'The State Courts did not appoint counsel in the initial-review collateral proceeding,' or 'appointed counsel in [that] proceeding... was ineffective under the standards of *Strickland v. Washington*, 466

U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); and (2) 'the underlying... claim is a substantial one, which is to say that... the claim has some merit.' Id., at 14, 132 S.Ct. 1309, 182 L.Ed.2d 272."

By appointing trial counsel as Mr. Redmond's appeals attorney, counsel and state working together made it "virtually impossible" to actually raise ineffective-trial-counsel claims on direct appeal, see *Trevino*, 133 S.Ct., at 1915, 1918-21. The Supreme Court extended Martinez's rule to such cases.

Mr. Redmond's actual innocence claim is one reason, because of counsel's ineffective assistance when he and trial judge introduced damaging evidence to undermined reliable testimony by twenty-one qualified expert witnesses. The two errors combined should widen the gateway through which the accused may pass to have his otherwise barred constitutional claims considered on the merits; not make this narrow classification more narrow.

Mr. Redmond first offered new evidence to meet the 28 U.S.C. § 2244(b)(2) conditions in the Fifth Circuit; then met several factors of Rule 6D(b); then ~~demonstrated~~ demonstrated the debatability of the district judge's ruling in a C.D.A. that required Mr. Redmond to overcome a sanction barring him to proceed further.... All stemming from the first cause that denied him the opportuni-

ty to present a defense at trial; having no appeal's attorney;
and sanctioned for requesting appointment of counsel.
This case has different numbers in the circuit court:

- (1) 17-50335 - sanctioned
- (2) 18-50813 - reinstated
- (3) 20-50635 - pending decision in
- (4) 20-90037 - denied and sanctioned

IV. [Question Four] Does the Supreme Court in *United States v. Frady*, 456 U.S. 152, violate the equal protection of law, where it allows a different standard of review for prisoners citing "Plain Error" who are similarly situated.

A. The Fifth Circuit of the court of appeals has denied Mr. Redmond's claim of plain error as barred by sanctions.

The Supreme Court held in *United States v. Frady*, 456 U.S. 152, the court's jury instruction on malice compelled the jury to presume malice and thereby wrongfully eliminated any possibility of a manslaughter verdict. If true, an error like this is a "plain error," readdressable under Federal Rule of Criminal Procedure, Rule 52(b).

In reviewing the facts and circumstances of Mr. Redmond's case, but for a constitutional violation to present a defense to the jury, also contributed to Trial Judge's denial of a lesser-included offense of manslaughter.

Mr. Redmond requested Special Charges to be read to the jury that was relevant to his disability (filed as exhibit #6 in the District Court to consider "Plain Error").

Trial Judge gave the jury the single alternative to find Mr. Redmond either guilty or innocent of murder only. The Charge to the Jury, filed as exhibit #7 in the District Court, refers to a person of ordinary temper. However, the

"Newly Discovered" evidence demonstrates that someone in Mr. Redmond's situation could possibly react the way he did. But the Charge given to the jury by trial judge refers to an ordinary and prudent person in the same circumstances as the defendant; whereas the jury could not possibly put itself in Mr. Redmond's situation.

See Appendix "I"

The Charge of the Court makes further reference that it is the jury's duty to consider all relevant facts and circumstances surrounding the case, together with all facts and circumstances going to show the condition of the mind of the accused at the time of the incident. But without a defense to present that involves Mr. Redmond's disability and understanding that a dislocated shoulder is an impairment of the use of arms in a physical altercation, the jury was prohibited from considering the "extraordinary" circumstances that cause's Mr. Redmond to react incapable of cool reflection. See App. "I."

This court should find Redmond's claims debatable at the least or that trial court simply erred. See *Blue v. Thaler*, 665 F.3d 653, 133 S.Ct. 105, 184 L.Ed.2d 49 (2012).

Petitioner has a constitutional right to "enjoy the right to have compulsory process for obtaining witnesses in his favor," U.S. Const. Amend. Six. *Washington v. Texas*, 388 U.S. 14, 17-18 (1967).

As with *U.S. v. Correa Ventural*, 6 F.3d 1070, 1076 (5th Cir.

1993), As a general proposition, a Defendant is entitled to an instruction as to any recognized defense for which there exist evidence sufficient for a reasonable jury to find in his favor, See *Matthew V.* 485 U.S. 58, 63, 108 S.Ct. 883, 886, 99 L.Ed. 2d 534 (1988), and we presume an abuse of discretion "Where the District Court refuse[s] a charge on a defense theory for which there is an evidentiary foundation and which, if believed by the jury, would be legally sufficient to render the accused innocent," *T.D.* (Quoting *H.S. Rubie*, 634 F.2d 443, 446 (5th Cir. 1987)).

There's a reasonable probability that disclosure of the findings of the "Newly Discovered" evidence would have changed the outcome of the proceeding. *Cone*, 556 U.S. at 465, 129 S.Ct. 1769 (2009).

The Federal Circuit, however, rejected precedent and history. It dismissed this Court's decisions in *Schlup*, *McDuggins*, *Buck*, and *Martinez*, and did not honour the gateway provided by the Supreme Court, through which a state prisoner petitioning for federal habeas corpus relief might pass, without being impeded by a monetary sanction.

In addition; plain errors are readdressable regardless of prior successive or abusive petitions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Eric R. Kelly", written over a horizontal line.

Date: January 4, 2021

Appendix "A"
Order of Circuit Judge
(2 pages)

United States Court of Appeals for the Fifth Circuit

No. 20-90037



IN RE: RANDELL JOSEPH REDMOND,

A True Copy
Certified order issued Nov 05, 2020

John W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Motion to Proceed after Sanction

ORDER:

Randell Joseph Redmond, Texas prisoner # 727110, who was convicted of murder, has filed a motion for permission to proceed after having been sanctioned. We previously imposed a \$100 sanction that remains unpaid. *See In re Redmond*, No. 17-50335 (5th Cir. June 1, 2017).

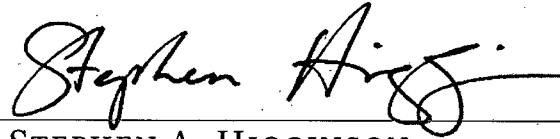
To obtain permission to proceed as a sanctioned litigant, Redmond must show that he is raising a nonfrivolous issue. *See Gelabert v. Lynaugh*, 894 F.2d 746, 748 (5th Cir. 1990). He has not made the required showing. Accordingly, his motion to proceed is DENIED.

Because Redmond has ignored warnings against submitting frivolous or repetitive filings and has not been deterred by the imposition of a monetary sanction, he is ORDERED to pay an additional sanction of \$100 to the Clerk of this Court. He is WARNED that he is barred from filing any pleadings challenging his conviction in this court or any court subject to this court's jurisdiction until the sanctions have been paid in full, unless he first obtains leave of the court in which he seeks to file his pleadings. Redmond is CAUTIONED that any future frivolous or repetitive filings in this court or

Appendix "A"

(1)

any court subject to this court's jurisdiction will subject him to additional and progressively more severe sanctions.

A handwritten signature in black ink, reading "Stephen A. Higginson". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

STEPHEN A. HIGGINSON
United States Circuit Judge

Appendix "A"

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 18, 2020

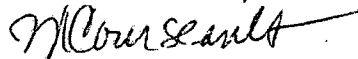
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-50635 Randell Redmond v. Bobby Lumpkin, Director
USDC No. 5:20-CV-803

The above case is closed in light of the order issued in
20-90037.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Melissa B. Courseault, Deputy Clerk
504-310-7701

Ms. Jeannette Clack
Mr. Edward Larry Marshall
Mr. Randell Joseph Redmond