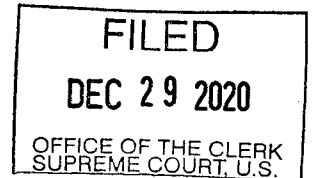


No: 20-7317

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Darex Antonio Chester — PETITIONER
(Your Name)

vs.

Burl Cain - Miss - Comm — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The court of Appeals fifth circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darex Antonio Chester No: R-2129
(Your Name)

S.M.C. I - P.O. Box 1419
(Address)

Leakesville MS 39451
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

ONE (1).

Whether the United States District court decision to deny Petitioner's § 2254 Habeas corpus Petition as untimely, was constitutional.

Two (2).

Whether the Court of Appeals for the Fifth Circuit decision to deny Petitioner's C.O.A. and Brief constitutional.

Three (3)

Whether both courts showed Partisanship between Petitioner and defendant Pelicia Hall ex-commissioner - Miss. Dept. Corrections.

four (4).

Whether both courts reviewed all evidence, or only evidence that was presented by inmate legal assistance dept. (I.L.A.P.) with outgoing mail, and not incoming logs.

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	3
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A ~ Court of Appeals State of Mississippi

APPENDIX B ~ Mississippi Supreme Court

APPENDIX C ~ United States District Court

APPENDIX D ~ United States Court of Appeals Fifth Circuit

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Rowland v. State, 42.3d 303 (Miss. 2010)	---
Solem v. Helm, 463 U.S. 277 103 S. Ct 3001, 77 L. Ed. 2d 637 (1983)	---
Ford v. Donnellis, 939 F.2d 1307, 1317 (5th Cir. 1992)	---
Little v. Johnson, 162 F.3d 833, 861 N. (7th Cir. 1998)	---
Nichols v. Scott, 169 F.3d 1233, 1278 (5th Cir 1993)	---
Eira v. Florida, 239 F. Supp. 3d 1331 (2017)	---
Brown v. State, 986 So. 2d 270, 275 (Miss. 2008)	---
Holliman v. State, 79 So. 3d 496, 500 (Miss. 2011)	---
Wordlaw v. State, So. 3d 768, 770 (Miss. App. 2017)	---
Chesney v. State, 165 So. 3d 498 (2015)	---
Rogers v. State, 93 So 3d 623, 632, 7730 (Miss 2012)	---
Barrientes v. Johnson, 221 F.3d 741 (2000)	---
Chandler v. Florida, 449 U.S. 560 (1981)	---
Blunt v. State, 55 So. 3d. 207-211 (Miss 2011)	---
United States v. Olano, 307 U.S. 725, 736, (1993)	---
Boyd v. State, 204 So. 2d 165 (Miss. 1967)	---
Edwards v. Sears-Roebuck and Co. 312 F.2d 276 (5th Cir 1975)	---
House v. State, 445 So. 2d 815, (Miss. 1984)	---
Thomas v. State, 818 So. 2d 335, 347-48 (Miss. 2002)	---
Estes v. Texas, supra. 381 U.S. at 387 85 S. Ct at 1662	---
Berry v. Bergen County Probation Dept	128, 3d 152 (1997)
United State. v. Betoli, 40 F.3d 1384, 1395 (3rd Cir. 1994)	---
Government of the Virgin Islands v. Dowlings, 814 F.2d 134-138.	---
(3rd Cir 1987)	---

Donaldson V. State. --- SO. 3d. --- (2018) ---
 Ross V. State. 934 SO. 2d 968 (2007) ---
 In re Wilson, 442 F. 3d 872, 875. (3th cir 2006) ---
 In re V. Jackson. No. 3:08-CV-302-DCB-JMR (2013) ---
 WL 85928 at *2 (S.D. Miss. Feb 25, 2013) ---
 Lewis V. McDonnell Corp. 211 F. 3d 437, 463 (8th cir 2000) ---
 Holland V. Florida. 360 U.S. 631, 649 (2010) ---
 House V. Dretke. 395 F. 3b 360, 362, (3th cir 2004) ---
 Hughes V. Johnson, 191 F. 3d 601 (1991) ---
 Clark V. Johnson, 202 F. 3d 760, 766 (3th cir 2000) ---
 Midwest Employers Gas Co. V. Williams 161 F. 3d 877, 880 ---
 N.G (5th cir 1998) ---
 Halicki V. Louisiana Casino Cruises Inc. 151 F. 3d 465, 468 (5th
 Cir, 1998) ---
 Brady V. Maryland 373 U.S. 83, 83 S. Ct 1194, 10 LEd 2d 215 (1963) ---
 Giglio V. United States, 405 U.S. 105, 154, 92 S. Ct 763 31 LEd 2d
 481 (1985) ---
 Kyles V. Whitley, 514 U.S. 419, 115 S. Ct 1555, 131 LEd 2b 490 (1995) ---
 Buck V. Davis, 137 S. Ct 758, 778 (2017) ---

Statutes And Rules

Rule 103 Sub. (d) --- other
 Rule § 2244 (d) (2) --- id. at 591, 85 S. Ct. at 1664 ---
 Rule § 2254 H.C. ---
 Rule 4. (A) ---
 Rule 9006 (b) (1) ---
 Rule 3A (7) ---

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☒ reported at Denied January 29, 2019; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☒ reported at Denied September 8, 2020; 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 Denied February 10, 2016; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☒ reported at February 16, 2016; 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 Feb 16th day of February 2016.

☒ 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: July 19, 2016, 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 N/A (date) on October 6, 2016 (date) in Application No. N/A A N/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 Jan 25 2017. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments

- ~1~ Fourteenth (14). Amendment.
- ~2~ First (1) Amendment
- ~3~ Fifth (5) Amendment.

Statutes

- Rule 103. Sub (d)
- Rule § 2254 (d) (2)
- Rule § 2254 H.C
- Rule § 4 (A)
- Rule 9006 (b) (1)

Other

- i d. at 391. 85 S.Ct at 1664
- Advisory committee notes to Fed R app P. 4, Subdivision
- (2) (5) (ii) 2002 Amendments
- Pioneer, 307 U.S. at 392.

STATEMENT OF THE CASE

Petitioner Darex Antonio Chester was sentenced on April 8, 2013, in the Pike County Circuit Court Magnolia Mississippi, to four (4) counts of a Controlled Substance under Miss. Code Ann. Section _____ and Miss. Code Ann. 99-19-81 and Section 41-29-147.

To serve a term of Two hundred Years, with one hundred and forty (140) suspended and Sixty (60) to serve day for day, with all sentences to run concurrently in the custody of the Mississippi Department of Corrections. Without eligibility of Parole or Probation, as a Nonviolent offender.

Petitioner has challenged all courts up to this point, and all motion, Petitions were denied, see Appendix's.

REASONS FOR GRANTING THE PETITION

Petitioner believes that his Petition should be granted for four reasons;

one (1)

District Attorney Dewitt Bates made improper comments in front of the jury while Petitioner Chester was on the stand, stating that Petitioner's testimony was "Bull crap" infecting the jury shifting all the weight on the Petitioner

two (2)

Honorable Judge Michael Taylor agreed that they was not gonna bring up Petitioner's past convictions unless Petitioner Chester opens the door, by allowing the jury to keep their cell phones gave them access to the internet, and allowing them to review District Attorney Bates laptop, before the verdict was given. that gave them access to Petitioner's Post-convictions.

three (3)

The United States District Court and The Court of Appeals for the Fifth Circuit denied Petitioner's § 2254 Habeas corpus without properly reviewing all evidence. the courts only reviewed the evidence that was most favorable to the state. Commissioner Pelicia Hall, and never considered Petitioner's -

four (4)

The lower courts never even considered that Petitioner's Fundamental Constitutional Rights was violated when "both" courts put a time bar on Petitioner's § 2254 Habeas corpus, ignoring compelling mitigating evidence, that his Habeas was sent to the wrong person, by legal assistance, not by Petitioner

Argument

One (1).

Prosecutorial Misconduct

Petitioner is contesting the decision that was made by the United States District Court and the court of Appeals Fifth Circuit. Petitioner's Due Process rights was clearly violated when District Attorney Dewitt Bates made improper comments during Petitioner's trial The Donnelly Claim: Prosecutor Bates unstable remarks in the presence of the jury infected Petitioner's trial, and showed a abuse of discretion.

The statement "Bull Crap" Exhibit A, which referenced to Petitioner's testimony, when he voluntarily took the stand, the statement rendered the trial fundamentally unfair, if jurist of reason would agree that the verdict would have been different, if Prosecutor Bates would have conducted himself as a officer of the state. Foy v Donnelly, 939 F.2d 1307, 1317 (3th cir 1992) Little v Johnson, 162 F.3d 855, 861 N. (7th cir 1998) and Nichols v. Scott 69 F.3d 1233, 1278 (3th cir 1995), Petitioner would "Not" be serving a twohundred year sentence (200) - with sixt (60) to serve day for day. The common Law torts: Malicious Prosecution, Eira v. Florida, 239 F. Supp.3d 1331 (2017). False imprisonment occurs when there is a improper restraint, which is the result of a Judicial Proceeding.

on March 12, 2013. The defence filed a motion in Limine requesting that the court Prohibit the Prosecution From making improper closing arguments, Punishments, and/or jury nullification (Valueless) the court also, and defence entered an order also to not allow the Proscution (Mr. Bates) from making a "golden rule" or send a message or "Clean up the neighborhood" type statements to the jury see, Exhibit B.

These type statements constitutes a reversible error. see Brown v. State, 986 So.2d 270, 275 (Miss. 2008) (Send-a-Message Arguments made, standing alone, be ground for reversal); Holliman v. State, 79 So.3d 496, 500 (Miss. 2011); Wordlaw v. State, So.3d 768, 770 (Miss. app. 2017); Chesney v. State, 165 So.3d 498 (2015); Rogers v. State, 95 So.3d 623, 632, 7736 (Miss. 2012). The United States District court and the United States court of Appeals for the fifth circuit, had "All" Facts before them and still Denied "All" of Petitioner's motions.

Remarks that are improper made during a State trial Shows a lack of discretion of any Government elected official, and a denial of a Party's Constitutional Right to fair court Proceeding Barrientes v. Johnson, 221 F.3d 741 (2000).

The "same Standards" that the District court used and the Fifth circuit in Barrientes and Brown, also applies to Petitioner, we now see that Petitioner was faced squarely with the reality that these Possibilities for distorting the integrity of our Judicial Proceedings, although such distortions may produce "No, telltale" signs their effects may be far more Perverse and deleterious than the Physical disruptions, which will concede or might vitiate a conviction Chandler v. Florida, 449 U.S. 360 (1981).

Prosecutors remarks, comments, or statements were improper see Transcripts Pg. 496 and Pg. 4 of motion filed, and Prosecutor Bates, should be imputed with the knowledge of the falsity of his statements, and the U.S. District court and Fifth circuit should have considered all mitigating factors, "Not" just the ones most favorable to the state.

The states closing argument was improper and unduly Prejudicial to Petitioner's trial, Prosecutor. Timothy Jones impermissibly told the Jury that it was their "Job" to find Petitioner guilty on all counts,

literally begged the jury to perform that duty. Because the state and the informant (Leahwood maghee) deserves it, see. transcript Pg. 446

This Statement allowed the Prosecution to shift all the burden of Proof on the Petitioner, the jury is a arm of the state, but not a arm of the Prosecution, the function of the jury is to weigh the evidence and to determine the "Facts only", Brown v. state, 986 so.2d 270 273 (Miss 2008). The Plain-error doctrine requires Proof of a error that resulted in a manifest, miscarriage of Justice, Blunt v. state, 33 so.3d 207, 211 (Miss 2011).

The Plain-error doctrine has also been construed to include "Any Error" that seriously affects the fairness, integrity, or Public reputation of "Any" Judicial Proceedings like Prosecutorial misconduct, which was Prohibited by the defence and the state, and a motion in Limine was agreed upon by both Parties see. Exhibit B - United states v. alan 307 U.S. 725, 736 (1993)

The court, and court, at its own option may notice Plain-error not assigned or distinctly specified see. Boyd v. state, 204 so.2d 165 (Miss 1967) if and when Petitioner Persuades and court of the substantial injustice that would occur if that Rule, (Plain-error) were invoked, Edwards v. sears - Roebuck and co, 312 F.2d 276 (5th cir 1975). We see that this Rule, (Plain-error-Rule) was not even considered by the United states District court, nor the Fifth circuit, seeing that this Rule (Plain-error-rule) was once invoked by the Fifth circuit in Edwards v. sears, Roebuck and co.

But, the Fifth circuit only considered evidence that was most Favorable to the state, not the Petitioner the Plain-error-Rule may be applied in either criminal cases or civil cases, so that leaves no room for excuse on behalf of Both Courts House v. state, 445 so.2d 815 (Miss 1984)

Petitioner contests the rulings of all the lower courts, PIKE CO. CIR
Court, court of APPEALS, U.S. District court, court of APPEALS FIFTH circuit,
stating that All courts showed a abuse of Discretion, and Violated his Due-
Process rights to fair court Proceedings, Plain ~ Error ~ Rule 103 sub (d)
these courts should be imputed with the falsity of their actions (1)
abuse of discretion, (2) Violation of Petitioner's Due-Process Rights.

Two (2)

Argument

Misconduct of the Court

Petitioner is contesting the way his Trial Judge Hon. Michael Taylor conducted Petitioner's trial, by allowing a Juror to keep their cellular phone, the whole time Petitioner's trial was going on, and while "she" deliberated, see Exhibit C which gave the Juror direct access to the internet, and Petitioner's Prior offences.

Petitioner's Attorney's Kitchens Law Firm, PA and District Attorney Timothy Jones and Dee Bates both did motions in Limine Prohibitting each Party from making or discussing Potential Punishments nor any Prior offenses and other Bad Acts. Thomas v. State, 818 So. 2d 333, 347-48 (Miss-2002) unless Petitioner opens the "door". see Exhibit D and E.

Judge Michael Taylor agreed to both motions. "a cellular phone" gives Juror's access to media, and allows Juror's to scan the internet (1) to examine closely (2) to obtain data. Pacifily Petitioner's Prior offences and other bad acts etc. what ever may be the mischievous Potentialities of (media coverage) for intruding upon the detached (impartial) atmosphere which should not always surround our judicial process. Estes v. Texas, Supra 381 U.S. at 387, 85 S. Ct. at 1662.

But my trial Judge Michael Taylor did not consider that Petitioner has Constitutional rights to, when Due Process of Law, when applied to substantive rights (meaning) that government or any lower courts is without right to deprive a person of life, liberty or property by an act that has "no" reasonable relation to any proper governmental issue.

But the trial court is required to determine whether information (cellular phones) to which a juror may have been exposed to, gives rise to substantial reasons to fear prejudice. Hon. Michael Taylor did not make that determination at Petitioner's trial, but allowed jury to keep their cellular phones, and access to Petitioner's old convictions, which did determine Petitioner's guilt at his trial.

Hon. Michael Taylor's failure to (voir dire) the juror's violated Petitioner's Due Process Right to a fair trial by jury, after becoming aware of the juror's cellular phone Judge Taylor did not take immediate action, knowing that Petitioner's life was on the line, but also allowed the juror to deliberate in the jury room with other jurors, and District Attorney's Newitt Bates' laptop. see Exhibit C.

Hon. Judge Taylor did instruct the jury not to look or utilize any other files on the computer. (District Attorney's Newitt Bates laptop) who's to say that they really followed Judge Taylor's instructions, Proceedings in trial courts should be conducted with fitting dignity and decorum, not on mere assumption, when a party's life is at stake. the taking of photographs in a closed trial and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings.

which caused a grave indifference to Petitioner's trial, and degrades the court and creates misconceptions. Berry v. Bergen County Probation, Dept. 128-3d 152 (1997) adopted also in Florida Canon 3A (7).

Judge Taylor should have "prohibited" these type of actions, while trial was in session, or while on recess or between sessions. Chandler v. Florida 44 U.S. 560 (1981)

The United States District Court and the United States Court of Appeals

Fifth circuit has clearly noticed these type of circumstances, but failed to act on them, these laws are laws that are built around their, or upon their foundation, these type of circumstances Pose a Serious risk, that an extraneous and inadmissible newspaper or cellular Phone may have Violated Procedural Rulings.

These issues are based on unfairness to the Petitioner. See United States v. Betoli 40 F.3d 1384, 1384, 1395 (3rd Cir. 1994). The courts concluded that information concerning the Petitioner's Prior Criminal Conduct had the Potential to be Prejudicial to Petitioner's trial, which Violated his Due Process. Government of the Virgin Islands v. Dowling, 814 F.2d 134, 138 (3rd Cir. 1987)

Petitioner has noticed that a Publicly minded Prosecutor and a Conscientious Judge (Michael Taylor) of the United States District Court and the United States Court of Appeals for the Fifth Circuit will "Not" stray from doing what comes naturally into Plumbing them selves for a satisfactory Performance id. at 391, 85-5-ct at 1664. Now, "All" Parties are faced squarely with the reality that these Possibilities carry Grave Potentialities for Distorting the Integrity of the Judicial Process, and such distortions will or may Produce no "tell tale" signs.

Their effects may be far more Pervasive and deleterious than the Physical disruptions which would vitiate a conviction Chandler v. Florida, 44 U.S. 360 (1981), Petitioner truly believes that all these courts understood what they did and stood behind the Law, in order to break the law.

The abuse of discretion has become common in Lower courts, and very common with African Americans, which takes up the Prison Population in Mississippi today. These Plain ~ Error ~ Rules Violates Petitioner's Due Process.

Donatton v. State, So. 3d (2018); and constitutes Reversible - Error's, also
Woodlaw v. State, So. 3d 768, 770 (Miss 2017).

The lower courts must "weigh" (consider carefully), "All" evidence not just the evidence which supports the states arguments this is what happened in Petitioner's case, "No one" considered Petitioner's facts, which he presented to the lower courts. Ross v. State 984 So. 2d 968 (2007), this violated Petitioner's Constitutional Rights, to fair court Proceedings.

Three (3)

Argument

Equitable Tolling Denied ----

Petitioner is contesting the decisions that was made by the United States District Court and the Court of Appeals Fifth Circuit, that Petitioner was eligible for equitable tolling under Section 2244(d)(2), but because of circumstances unknown to Petitioner his Habeas corpus § 2254 was filed seventy seven (77) days late. Petitioner's tolling Process started on January 4, 2017 and ended on January 4, 2018. Also, Petitioner is entitled to 21/22 days of statutory tolling.

Petitioner states that the inmate Legal assistance mailing department hear at South Mississippi Correctional Institution (S.M.C.I) is the reason for the delay. on January 1, 2018 Petitioner submitted his Habeas corpus Petition to (I.L.A.P.) with statutory time still pending in In re Wilson 492 F.3d 872, 875, (5th Cir 2006) also Elder 204 F.3d at 174 states, delays of Petitioner's own making do not qualify, or stop the tolling Process.

Director Gia N. McLeod (I.L.A.P.'S) director stated that she and others provide "All Legal Assistance" to inmates see: Exhibit F. Affidavit signed by Gia N. McLeod.

Director McLeod has sent EX Commissioner Patricia Hall all of Petitioner's documents, request forms, that was filed and signed by Petitioner dating from March 1, 2017 to September 3, 2017 and all outgoing mail as request by Hall see. Exhibit F. But why didn't Hall request incoming also, its all part of the "Legal" mailing department, "Right",

The "Good Cause standard" is applicable in situations in which there is no fault, excusable or other wise. EK.com Hall had no excuse why she did not request both mail logs, incoming and outgoing logs, unless something is personally being overlooked. Advisory Committee notes to Fed. R. App. P. 4 Subdivision (a) (5) (A) (ii) 2002 Amendments. In those situations,

Petitioner states that the United States District Court and the United States Court of Appeals for the Fifth Circuit never considered these factors, only the ones that was most favorable to the state. Petitioner states that he only attempted to send his transcripts to L.V. Williams PLLC, /s/ze, Attorney for Petitioner to review, see Exhibit G, and Exhibit F.

The Legal Assistance mailing department (I.L.A.P.) mistakenly sent Petitioner's Habeas Corpus # 2254 to the Deputy Commissioner of Institutions, (Jerry Williams) and Petitioner's transcripts. Petitioner's transcripts, only his transcripts should have went to L.V. Williams, Petitioner's soon to be Attorney, D.C. I. Williams after receiving all Petitioner's documents from (I.L.A.P.) D.C. I. Williams filed a Motion Request form, see Exhibit H.

Petitioner argues that he "Never" knew that his Habeas Corpus went to D.C. I. Williams, (where the mistake occurred is a mystery). Petitioner never knew that his Habeas Corpus was "Not" filed into the United States District Court, on time, But was sent to D.C. I. Williams (must have been a mailing error). Petitioner received this Motion Request from D.C. I. Williams on April 10, 2018 with his transcripts and Habeas Corpus attached.

After noticing the time lapse (a slight error). Petitioner immediately filed his Habeas Corpus on April 12, 2018, which was signed and submitted to (I.L.A.P.) dept. see Exhibit I.

The United States Supreme Court has further instructed that a misinterpretation of unambiguous Procedural rules usually goes against findings (Excusable Neglect). See Pioneer, 367 U.S. at 392. This also has been recognized by the United States District Court, it is the most important of the Pioneer Factors, is the reason for delay including, whether it was in the reasonable control of the movant. Judson v. Jackson, No. 3:08-cv-302-DCB-JMR, (2013 WL 685928, at *7 (S.D. Miss Feb 25, 2013)) citing Lewis v. McDonnell Douglas Corp, 211 F.3d 457, 463 (8th Cir. 2000)

The Lower Courts has noticed these Factors, but has failed to recognize them in Petitioner's motions and only noticed (Hall's) arguments that was not based on Facts, but Petitioner "is" entitled to equitable tolling only if he can demonstrate (1). that he has been pursuing his rights diligently. (2) that some extraordinary Circumstances stood in his way and prevented timely filing. Holland v. Florida, 360 U.S. 631, 649 (2010).

Petitioner has demonstrated these factors in several motions and has been very diligent in all his filings, stemming from 2014-2020 see log-history and has proven that extraordinary Circumstances did stand in his way (I.L.A.P.) Dept. at S.M.C.I but the lower courts never considered these factors, and the ones that was most favorable to the state.

(Hall) never showed any proof that the statements which Petitioner stated about (I.L.A.P.) incoming mail log was false, and never proved that (I.L.A.P.) delivered Petitioner's Habeas corpus and transcripts on April 10, 2018 which came from D.C.I, Williams see, incoming receipt. Exhibit 1 Not considering all factors, Ross v. State, 934 So.2d 968 (2007).

Petitioner has stated valid claims, which violated his Due Process Rights, and has proven these claims to the United States District Court and the Court of Appeals for the Fifth Circuit, but all claims were denied.

Hall clearly stated that Petitioner's Valid (Sound) (founded on truth) Claims where enough reason for relief. see Exhibit K.

The court of Appeals for the Fifth circuit states that if Petitioner makes Substantial showing and can also demonstrate that reasonable jurist could debate whether Petitioner has made a valid claim, A C.O.A. will issue, united states circuit Judge Catharine Hayes, stated that Petitioner did make these claims see Exhibit L. the claims are debatable, see Houser v. Dretke, 395 F.3d 360, 362 (3th Cir 2004). if they are substantial, why didn't the Fifth circuit issue the C.O.A., because they only considered Hall's claims, and not Petitioner's.

Four (4).

Argument

Time Bar Issue Denied

Petitioner is contesting the decision that was made by the United States Court of Appeals for the Fifth Circuit when Petitioner's Habeas corpus § 2254 was denied as time barred. The Mississippi Supreme Court recently held unequivocally that errors affecting from the Procedural bars of the U.P.C.C.R.A. Rowland v. States 42.3d 503 (Miss. 2010) only if he has shown that he was actively misled from seeking Federal Habeas relief, in a timely manner.

Petitioner argues that the lower courts erred in refusing to consider the mitigating evidence independently, the lower courts should have conducted a denovo review of Petitioner's evidence, as they did for the state, even if the state evidence by its self were minimally sufficient, Petitioner's evidence was too. Solem v. Helm, 403 U.S. 279, 103 S. Ct. 3001 97 L. Ed. 2d 637 (1983).

Petitioner will maintain his argument that the lower courts abuse of discretion, and its limited review of Petitioner's Habeas Violated his Due Process Rights, and without that review, Petitioner's Habeas was time barred, ignoring compelling and contradicted mitigating evidence Violated Constitutional Rights. Hughes v. Johnson 191 F. 3d 601 (1999).

United States Circuit Court Judge Catharina Hayes, stated that Petitioner abandon his time bar issues see Exhibit L. Petitioner was warned several times by the United States District Court, that he was in danger, because of his many filings, so Petitioner didn't wanna get barred outta the District Court. see. warnings Exhibits M.

The Court of Appeals Fifth Circuit has previously explained that when the District court has "sufficient facts" before it to make informed decisions on the merits of Habeas claim, it does not abuse its discretion in failing to conduct an evidentiary hearing. Barrientes v. Johnson, 221 F.3d 741, 776 (5th Cir. 2000), federal hearings does not necessarily require live testimony, indeed, the 5th Cir. has repeatedly found that a paper hearing is sufficient to afford a Petitioner a full and fair hearing on the factual issues. Underlying the Petitioner's claims Clark v. Johnson, 202 F.3d 764, 766 (5th Cir. 2000).

Petitioner has had many factual facts before the District court and the 5th Cir. but a evidentiary hearing was never done, on these facts, the courts has never considered Petitioner's entire record if it would this motion for a writ of certiorari into the United States Supreme Court, would not be needed.

Petitioner states that mistakes has happened, not once but twice with (L.A.P.) on January 29, 2019 documents that was supposed to have been mailed to Petitioner, legal documents, did not make it to Petitioner on time in order for him to file his motion, into the District Court see Exhibit N. So the state extended Petitioner's deadline for filing.

Mistakes do happen see Rule 4(A). although Pioneer supra involved Bankruptcy Rule 9006 (b) (1) the United States Supreme Court drew on a number of legal provisions containing the Excusable Neglect, into Non-Bankruptcy Rule 4(A) see Midwest Employers Gas Co. v. Williams, 161 F.3d 877, 880 N.G. (5th Cir 1998) and Halick v. Louisiana Casino Cruises, Inc., 151 F.3d 465, 468 (5th Cir 1998)

Hall stated, that this incident was a isolated one see Exhibit O Postal Inspector Anissa Stubbs who advised Hall that "All mail" comes into the Facility from the Post office, is sorted and distributed as follows, stating that

the staff at C.M.C.F Post office sorts "All" incoming mail and logs all legal mail. see Exhibit P. if C.M.C.F handles "All" loggers so does S.M.C.T. because they are all M.D.O.C.

A Petitioner's Due Process Rights are Violated when upon a request for exculpatory evidence, when the government conceals evidence, that is both favorable to the Petitioner and material to the Petitioner's guilt, or Punishment, or impeachment the courts has to consider the Brady Rule. Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed 2d 215 (1963). Aglio v. United States 405 U.S. 150, 154, 92 S.Ct. 763, 21 L.Ed 2d 104 (1972).

The lower courts should have known that evidence is material, when a reasonable Probability exists that its disclosure would have cause a different outcome United States v. Bagley, 473 U.S. 667, 674-75, 105 S.Ct. 3375, 87 L.Ed 2d 48 (1985). If the nondisclosure could have put the case in a completely different light so as to undermine confidence in the outcome of the Proceeding, the Petitioner will have demonstrated the reasonable Probability necessary under this test. Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed 26 490 (1995).

materiality is judged according to the cumulative effect of "All" the undisclosed evidence, not just what Hall Presented to the state and the lower courts, the United States District court and fifth circuit could have considered a number of factors, including in an appropriate suitable case: (1) the risk of injustice to the Party, (2) the risk of undermining the Public's confidence in the Judicial Process Burk v. Davis, 137 S.Ct. 958, 728 (2017).

The United States District court and the Fifth circuit did not consider all the factors in Petitioner's Habeas corpus, C.O.A. and Petitioner's Brief, errors that amounts to constitutional deficient constitutes cause, under the cause and Prejudice tests, for overcoming judicial defaults.

Petitioner has shown that there is a reasonable Probability that the lower Courts made a wrong Clinical decision in denying Petitioner's motions. Petitioner ASKS the united state supreme court to Vacate the lower courts Previous decisions or remand back to the circuit court for resentencing or grant Petitioner's C.D.A. and Brief. or overturn his entire conviction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darex Antionio chester NO. R-2129

Date: December 23, 2020