

20-7331

ORIGINAL

In the
supreme court of the
states

FILED

JAN 26 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Kevin L martin
your name - petitioner

VS

Richard Brown Etal
- respondents

on petition for a writ of certiorari
To the seventh circuit court of Appeals
name of court that last ruled on merits of
your case

Kevin L martin # I DOC 169789
your name

pendleton correctional Facility
4490 w reformatory rd
Address

pendleton IN 46064-9001
city state, zip code

NA

phone number

(-)

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

MR MARTIN ALLEGED THAT THE STATE HAD FAILED TO DISCLOSE CRITICAL EXCULPATORY EVIDENCE THAT A BRADY-VIOLATION OCCURRED WHEN THE STATE FAILED TO PROVIDE THE DEFENSE WITH REPORTING DEALING WITH BALLISTIC TEST DONE ON THE THREE-3 PROJECTILES AND AFFIDAVIT FOR SEARCH WARRANT, ' COULD BE USED TO IMPEACH WITNESS AT TRIAL.

MR MARTIN ALLEGED THAT HIS TRIAL-COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE MARTIN ALIBI DEFENSE.

MR MARTIN ALLEGED THAT A FUNDAMENTAL MISCARriage OF JUSTICE, DEAL WITH DEFRAUDATED CAN BE EXCUSE IF THE PETITIONER SHOW THE CAUSE AND PREJUDICE REQUIREMENT HAS AN, " ACTUAL INNOCENCE EXCEPTION.

THE DISTRICT COURT DENIED THE HABEAS PETITION FINDING THAT MARTIN HAD PROCEDURALLY DEFRAUDATED ON THIS CLAIM. MARTIN HAS APPEALED ON THE ISSUE OF PROCEDURAL DEFRAUD.

MR MARTIN ALLEGED HE FILED A MOTION TO STAY PROCEEDINGS TO GO BACK AND EXHAUST HIS STATE REMEDIES BEFORE SEEKING FEDERAL RELIEF. MARTIN HAD A GOOD CAUSE WOULD EXPLAIN IT AND FILED MOTION FOR LEAVE TO AMEND HABEAS CORPUS PETITION.

List of parties

☒ All parties appear in the caption of the case on the cover page

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

Related cases

(1) Brady v Maryland 373 US 83, 83 1963

(2) Bank v Dretke 540 US 668 124 S Ct 1256 1263 2004.)

(3) Coleman v Thompson 501 US 722 115 S Ct 1801 1991.)

(4) Miller E. v Cockrell 537 US 322 2003.)

(5) Sawyer v Whitley 505 US 580 112 S Ct 2518 1992.)

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(1-) THE district court deny martin habeas petition on defaulted overlooking martin actual innocence and seventh circuit deny martin certificate of appealability improperly deferred to the district court decision.

(2) THE district court decision is in conflict with state court decision.

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- full-over-

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 and 2 to the petition and is

☒ reported at Appendix; or,

NA ☐ has been designated for publication but is not yet reported; or,

☐ is unpublished. *NA*

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

☒ reported at Appendix; or,

NA ☐ has been designated for publication but is not yet reported; or,

☐ is unpublished. *NA*

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 57 to the petition and is page 57 thru 70

☒ reported at Appendix; or,

NA ☐ has been designated for publication but is not yet reported; or,

☐ is unpublished. *NA*

The opinion of the state and federal/page 1 thru 4 court appears at Appendix 1 thru 4 to the petition and is

☒ reported at Appendix; or,

NA ☐ has been designated for publication but is not yet reported; or,

☐ is unpublished. *NA*

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JURISDICTION

- ☒ For cases from **federal courts**: *Martin seeking A review under rule 12.4 in your jurisdiction statement*
The date on which the United States Court of Appeals decided my case was November 19 2020
seek review under both 20-1518-201722 in this case.
☐ No petition for rehearing was timely filed in my case. *yes*

- ☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

- NA* ☐ An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. A NA.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

- THE original opinion of seventh circuit court of appeal was entered November 19 2020 a timely motion to that court for rehearing was send later because the court send my deny to westville who with holding it for over 30-day. At my fault, Martin seeking A review*
☐ For cases from **state courts**: *under rule 12.4 in your jurisdiction statement*

The date on which the highest state court decided my case was NA.
A copy of that decision appears at Appendix NA.

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

- NA* ☐ An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. A NA.

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

(-) \$

Statutory and constitutional provisions involved
The following statutory and constitutional provisions are
involved in this case.

US Const 14 Amend -

The US constitution is the supreme law of
the land the Amendments to the constitution
provide individuals in this country with certain right
within the US constitution the main protection
against actions by state officials is found in the
fourteenth Amendments, "THE PHRASE due process
of law is broad in its application and difficult
to pin down with a precise definition nevertheless
the due process clause of the fourteenth
Amendment can be understood in terms of
two concepts procedural and Basically we
think of procedural due process in terms
of "notice," and the opportunity for a
Full And Fair trial or hearing procedural
due process, also means the opportunity
to be heard by an unbiased judicial
platform.

(2) 60

US const Amend XIV,"

Section 1- 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, or property without due process of law, nor deny to any person within it's Jurisdiction the Equal-protection of the laws.

US const, Amend VI

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 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 defense.

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.

(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 court of the state or

(B) i) there is an absence of available

STATE CORRECTIVE PROCESS, OR (ii)
CIRCUMSTANCES EXISTS THAT RENDER SUCH
PROCESS INEFFECTIVE TO PROTECT THE RIGHT
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 COURT 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
EXHAUST THE REMEDIES AVAILABLE IN THE
COURT OF THE STATE WITHIN THE MEANING
OF THIS SECTION, IF 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 PRISON 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
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

E) 1.) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court, a determination of a factual issue made by a state court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2.) IF the Applicant has Failed to develop the Factual basis of a claim in state court proceedings the court shall not hold an Evidentiary hearing on the claim unless the Applicant show that--

(A) the claim relies on--

(i-) A new rule of constitutional law, made retroactive to cases on collateral review by the supreme court that was previously unavailable; or (ii) A Factual predicate that could not have been previously discovered through the EXERCISE OF due diligence and

(B) the Fact underlying the claim 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.

(F) IF the Applicant challenges the sufficiency of the Evidence adduced in such state court proceeding to support the state court's determination of a Factual issue made therein the Applicant, IF able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence

to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record then the state shall produce such part of the record and the Federal court shall direct the state to do, so by order directed to an appropriate state official. If the state cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the state court's factual determination.

(g) A copy of the official records of the state court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the state court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the controlled substances act, in all proceedings brought under this section, and any subsequent proceeding on review

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the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provide by a rule promulgated by the supreme court pursuant to statutory authority appointment of counsel under this section shall be governed by section 300-6-A of title 18-

(1-) 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.)

STATEMENT OF THE CASE,"

MR MARTIN WAS CONVICTED OF THE MURDER PEARLIE
DICKERSON.

ACCORDING TO JONQUIL DICKERSON MARTIN ASKING HER
FOR A EX-BOY FRIEND PHONE-NUMBER AND MARTIN
ENTER THE BED-ROOM WITH (1) ALICE DORTCH (2)
LATANYA JENKINS (3) ERNEST DICKSON (4) CHARVON
FOX AND PEARLIE ORDER ALICE TO SHUT THE BED
ROOM DOOR AND ORDER JONQUIL TO TAKE A SHOWER
AND THE CHILDREN STILL HEAR MARTIN AND PEARLIE
IN THE LIVING AND HEAR 3- GUN-SHOT AND JONQUIL
AND OTHERS COME OUT THE ROOM.

AT TRIAL STATE PRESENTED SIOBHAN MCFADDEN
AS PERSON WHO OPEN THE DOOR FOR THE VICTIM
ON 7-19-66 AND THE VICTIM COLLAPSED FROM
THE HALLWAY INTO APARTMENT B-3, AND MCFADDEN
CAUGHT THE VICTIM AND SAW MARTIN BEHIND
THE VICTIM WITH OBJECT IN HIS HAND.
SEE APP PAGE-9.) DIST 38-4-AT 146-50

MARTIN DEMONSTRATING THAT HIS ACTUAL
INNOCENCE AND IF THIS COURT'S FAILURE
TO CONSIDER THE DEFAULTED CLAIM WOULD
RESULT IN A FUNDAMENTAL MISCARriage OF
JUSTICE, SEE MURRAY V CARLIER 1986
477 US 478 91 LEd 2d 397 106 Sct
2639," THE SUPREME COURT HELD THAT
IN ORDER TO INVOLVE THIS EXCEPTION, A
FEDERAL HABEAS CORPUS PETITIONER IS
REQUIRED TO SHOW THAT A CONSTITUTIONAL
VIOLATION HAS PROBABLY RESULT IN THE
CONVICTION OF ONE WHO IS ACTUALLY

innocent SEE *Schlup v Delo* 513 US 298
130 L Ed 2d 808 115, S (1995.) or
Sawyer v Whitley 1992 505 US 333 120
L Ed 2d 269, 112 S Ct 2514, The Supreme
Court held that, For purposes of Applying
the Exception to reach the merit of challenge
to a state conviction the petitioner must
show by "clear and convincing evidence
that but for a constitutional error
requirement of proof beyond a reasonable
doubt and Martin argues that the prosecution
violated Martin 14 Amendment right to
a Fair trial under, see *Brady v Maryland*
373 US 83, 87 1963 by Failing to turn-over
the Affidavit for Search warrant that
identifying Gerald cotton as person who
open the door, For Pearl Dickerson on
7-19-06, also suggesting Mr cotton
spoke with Anthony Bontager and problem
Here Martin could used this Affidavit
to impeach state witness (1) Gerald cotton
(2) McFadden (3) Jonquil Dickerson (4)
Latanya Jenkins (5) Alice Dortch dealing
with the position at the time Gerald
cotton open the door, Aim at the
description of person they saw in
the hallway, could cause reasonable
doubt own one jury, In the Jury
room, because Mr cotton information
inside the Affidavit state that
Pearlie, walking into his apartment
then Fall, SEE App-page 60-thru 65)
(19) 19

martin had to Establish three things to prevail on his Brady claim in the state court proceedings. martin first had to show that the government failed to give martin evidence favorable to his defense that would tend to show his innocence or which could be used to impeach witness at trial, Brady claim,

It matters not whether the defense requested the information or the government's failure was inadvertent the government's duty is to turn over all exculpatory information in its possession SEE united states v Agurs 427 US 97 106-97 1976) martin was harmed by the state withholding the affidavit for search warrant, "place martin in a grave hole, of injustice.

martin also had to show that the evidence was material to an issue at trial that had the evidence been disclosed to the jury at trial there is a reasonable probability that the result would have been different SEE Strickler v Greene 527 US 263 280 1999) SEE united states v Bagley 473 US 667, 682 1985) THE reasonable probability standard for materiality of suppressed evidence is less rigorous than a preponderance of the evidence standard in that a petitioner need only show that the new evidence undermines confidence in the verdict see Kyles v Whitley 514 US 419 434 1995)

when the cumulative effect of all the suppressed information is to undermine confidence in the verdict, such a reasonable probability exists, Id.

Addressing the First Brady element Affidavit for search warrant not disclosed with that information that Gerald cotton open the door could been use to impeach the state witness at trial.

McFadden description martin AS have a object not disclose and had martin had the Affidavit could show good cause that he was not at the apartment at 11:45 am at time of the shooting and Exhibit 4-) introduce at the post conviction hearing was not disclose but it a part of the discovery because it start off with ob, number, like other discovery SEE App -page 83 thru 84-)

BECAUSE this case comes to you on habeas review from a state court decision and district court over review of that conclusion is limited by 28 U.S.C 2254-d) Federal court are not permitted to grants a writ of habeas corpus unless the state court's decision was contrary to or involved an unreasonable application of clearly established Federal law, as determined by the supreme court 28 U.S.C 2254 d1- or if the decision" was based on an unreasonable determination

OF THE FACTS IN LIGHT OF THE EVIDENCE
presented 28 U.S.C. 2254 d) 2) A state court
unREASONably applies Federal law IF it identifies
the correct legal principle but unREASONably
applies it to the FACT OF THE CASE OR IF
it unREASONably REFUSES to EXTEND A principle
to A context in which it should apply see
Williams v Taylor 529 US 362 407 2000
Essentially martin must show that the Indiana
court application of Brady was not just incorrect
but also unREASONable "that is lying well
outside the bounds of permissible differences
of opinion SEE Taliver v McCaughtay 539
F3d 766 774 7th Cir 2008") internal
citation omitted
under 2254 d) 2) A DECISION involves AN
unREASONable determination OF THE FACT
IF it REST upon FACT-Finding that ignores
the clear and convincing weight OF THE EVIDENCE
see Ward v Sterne 334- F3d 696 704
7th Cir 2003,
martin need not demonstrate that AFTER
discounting the inculpatory EVIDENCE in light
OF THE undisclosed EVIDENCE there would
not have been enough left to convict,"
because state witness (1) Jongwil (2) Alice
(3) Lafanya state that the victim Fell From
the hallway into the Apartment And Gerald
cotton information in AFFIDAVIT said the
victim walking into the Apartment Then
Fall show good cause that martin was
not at crime scene at time OF the
(22) 22

Shooting At 11:45 am on 7-19-06, precluded
HERE state's Failure to provide martin
with a copy of ballistic test's and Affidavit
SEARCH warrant.

martin point out that the report concludes
that the gun used in this case was 38 or
357 or auto At trial state introduce
RAY wolfenbarger, who claim he testing
Evidence, testified that the projectiles
Found in this case were From the 38
Family SEE Trp 446 And Trp 448 And
consistent with winchester Ammunition
which is typically utilized by revolvers
martin believes that if they would have
had the report prior to trial his attorney
could have impeached his testimony by
pointing out that when he did the test
he could not say if it was a 38 or 357
but then at trial he just only mentioned
38 caliber Ammunition.

In An Actual innocence gateway CASES
A habeas petitioner must demonstrate
two thing before his procedural default
will be Excused. martin present new
reliable Evidence that was not presented
At trial. Second A petitioner must show
by A preponderance of the Evidence
that it is likely than not that no
reasonable juror would have convicted
martin in the light of the new Evidence.

(1-) THE murder weapon was never recovered in this case though and the state argued that the fact that martin owned 38 caliber ammunition showed that martin had access to a 38 caliber handgun;

It was determined that, although the ammunition found at martin friend's house was the same caliber as the ammunition used to kill the victim, it was not the same type. The ammunition used in the shooting was full metal jacket while the ammunition found at martin friend apartment was hollow point.

martin must state Teresa patterson was a ex-girl-friend who at the direction of martin bought the box of ammunition that was found in martin friend's apartment. martin states that Teresa patterson would have testified that she bought the wrong caliber ammunition. This testimony along with the fact that the box of ammunition was full, martin argues would counter the state's argument that he had access to a 38 caliber handgun because Teresa patterson try to buy some 38 shell for a 38 auto and shell small and she would testified to this at trial would cause a reasonable doubt in the jury room and shows martin did own a 38, (dict at 19.)

(2) martin must explain how chevonne Fox would exonerate martin because ms Fox was inside the bed-room on 7-19-66 when donquil made allege that martin asking

Fox her EX-boy-Friend phone-number and
charonac would testified that martin was
not inside the apartment at the time of
the shooting or enter the bed-room because
she would saw martin that would cause
a REASONABLE DOUBT own one jury in the
jury room and show good cause that martin
was not inside this apartment at 11:45am
SEE Kevin martin V Ashlynn Ledford no
219-CV-00201-JAS-MSD

ms Fox would testified that the police
was looking for Kevin martin Billington
for the murder of pearl Dickerson, not
Kevin martin? Reliable Evidence?

(3) trial counsel was INEFFECTIVE and conduct
undermined the proper functioning of the
adversarial process see Strickland V Washington
466 US 668 1984) when he failed to
investigate and call able witness in
martin defense officer / Homicide detective
James Taylor testified the distance between
the location of the crime scene and the
location witness testified martin was at
around 12:00 PM (772) about a 30 to 40
minute walking distance TX at 673-675
or a 15 to 20 minute run if it might
be shorter cutting through parking lots
TX at 676) officer were dispatched
at 11:45 PM 248 martin placed a
call from this location to his cell-
phone that he left with the victim
(22) 25

At 11:59 TR At 681.) This gives martin 14 minutes to make a 15 minute run and use the phone a distance of 1.4 to 2.2 miles TR (672-674.) Emmitt Hinkle the resident of the location, martin placed the call from testified martin looked normal and did not appear to be perspiring or looked like he had been running TR 783.) martin testified he was at a shopping mall for at least 15 minutes TR 800.) trial counsel testified that he spoke to an employee of the music store and this person stated that in fact martin was in the area PC TR At 15.) And that this fact was brought out in trial. A review of the record reveals this was not brought out and trial counsel never subpoenaed this witness to testify Fall's below professional norms as it would have been impossible for martin to have committed this crime. Failure to investigate exculpatory eyewitness was objectively unreasonable SEE united states EX rel Hampton V Leibach 347 F3d 219 252 7th cir 2003) while this witness is not an eyewitness her testimony would have exonerated martin all counsel had to do was obtain the video from the music store which his failure to do meets the first prong of strickland and would cause reasonable doubt own one jury in the jury room and out come would been different in this case. SEE new reliable evidence

see page 60 thru 65) App page 83.)

(4.) martin present new evidence that was not present at trial that Randy Kap's interview Alice Portch and Latanya on 7-19-06 and both identify Kevin martin Billinger as the person they saw on 7-19-06 inside the apartment and had the jury heard this would cause REASONABLE DOUBT own one jury and outcome could been different in martin case.

(5.) martin present new evidence sgt walker interview mcFadden and mcFadden never identify Kevin martin on 7-19-06 in the interview had the jury heard sgt walker explain that mcFadden identify a person with a pony-tail in his hair could cause reasonable doubt own one jury in the jury room because prosecutors have a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case see *Kyles v Whitley* 514 U.S. 419 437 1995.) SEE 4 and 5.) speak for itself HERE. SEE App page 77 thru 78) martin follow this 'standard,' THE Fundamental miscarriage of justice standards by introduce new reliable evidence. SEE Kevin martin v state of Indiana 71A03-0707-CR-323

At post conviction hearing, "Keith Vreagon
A south Bend police testify about the
report SEE App. page 83.) And page 84.

Have the same ob number start off
show cause good cause that this EXculpatory
Evidence was withholding by state because
it was favorable to martin ~~defense~~ defense

Q you don't SEE the bottom where it
say handgun auto," didn't you write
that

(A) This has nothing to do with me, this
isn't a report that I would file

Q that ain't the report you filed
why would it say the victim EXpire
from handgun auto,

(A) I can't answer that I didn't file
this but your name on the report
SEE App page 10)

At post conviction hearing, "Anthony
Bortagen PC Tr. at 51)

(A) IF there's A copy OF the AFFidavit
and they'd let me look at that
I could look at that

(Q:) So you're saying IF you had the
AFFidavit, it would be able to refresh
your memory (A) yes,

IF martin had AFFidavit For search
warrant would prove his 14. Amendment
right was violation by the state

with holding the EXculpatory Evidence
from martin at trial.

(A) It IS EXculpatory (B) it can be used
to impeach a prosecution witness about
who they saw in the hall-way after the
shooting because the inconsistent with the
victim Fall From hall-way into apartment
B-3 cotton apartment or the victim
walking inside apartment could have
been the difference between martin
guilt and innocence deal with the
identify by (1) Jorgul (2) Alice (3)
Lantany (4) McFadden (5) Cotton
could cause REASONABLE doubt own are
duty and outcome would be different.

martin notes single ERROR can support
claim of TAC.

SEE MURRAY V CORRIER 477 US 496 91
Led 2d 397 106 Sct 2639 1986)

which AS this court has indicated
may in a PARTICULAR CASE be violated
by even an isolated ERROR of counsel
if that ERROR is sufficiently
egregious and prejudicial see

US V CRONIC 466 US 648

trial counsel had A duty to marshal
all the document before trial to
prepare A defense in martin case
or brought it to the court attention
he did have AFFIDAVIT For SEARCH
warrant and ballistic test that

he could use to impeach and counsel
decision not to present evidence can be
deemed reasonable only if it is
predicated on a proper investigation
of the alleged defense, counsel has a
duty to make reasonable investigations
or to make reasonable decision that
make particular investigations unnecessary
see *Strickland v Washington* 466 US 668
(9/1984.) did not happen mean martin
was deprive of sixth Amendment right
and prejudice test is not a more
likely than not test; the result of
a proceeding can be unreliable and hence
the proceeding unfair, even if counsel
error, counsel can be found ineffective
if strategy was uninformed or
unreasonable," the reasonableness
of a purported strategic decision
is judged in terms of the adequacy
of the investigations supporting it
in, see *Wiggins v Smith* 539 US
510 521, 2003.)
if counsel does not offer a strategic
basis for an act or omission the
reviewing court should not speculate
about a possible strategic basis see
Harris v Reed 894 F.2d 871 878 7th
Cir (1990) Just as a reviewing court
should not second guess the strategic
decisions of counsel with the benefit of
hindsight of it should also not construct
strategic defenses, which counsel does not offer & d,

REASON FOR Granting the writ

(1-) THE seventh circuit mis-application of the prejudice standard of martin innocence none such as the Fundamental miscarriage of justice or strickland and Brady warrants this court attention.

A Full-range of circumstances in which a habeas petitioner is eligible for stay and abeyance is not yet clear SEE cassett v Stewart 406 F3d 614 625 9th 2005) cert denied 546 US 1172 2006-) remanding to district court with instructions to consider consistent with see rhines v weber, whether to stay the proceeding hold in abeyance cassetts Exhausted petition and dismiss without prejudice his unEXhausted Federal claim under 14 Amendment to his due process claim, so that he can present it to Indiana state court see King v Ryan 869 F3d 1133 1135, 1139 11,42 9th cir cert denied 558 US 887-2009-)

under pre-rhines three-3 step's procedure that 9th circuit adopted in "Kelly v Small 315 F3d 1063 9th cir 2003.) which remains Available After the supreme court decision

In rhines v weber petitioner can (1)

Amend his petition to delete any unEXhausted claim (2) request that Federal court

EXercise it discretion to stay and hold in abeyance the Amended Fully EXhausted petition providing the petitioner the opportunity to proceed to state court to Exhaust the deleted claim and

(3) 31

(3.) once the claim's have been Exhausted
in state court return to Federal court
and amend his Federal petition to include
the newly Exhausted claim's SEE App
page-6.) SEE App page 16.) App page- 17)
App-page 18.) page 18.) SEE App page- 40)
and App page page 42.)

good cause For martin) Failure to
Exhaust claim first in state court,
his mixed petition and District court
abuse of discretion because with the
supreme court's opinion on the understanding
that the opinion's reference to good cause
For failing to Exhaust state remedies
more promptly was not intended to
impose the sort of strict and inflexible
requirement that would trap an unwary
pro, se prisoner like martin because of
his incompetence.

on 4-11-18 martin was prevented
from presenting the foregoing claims to
the Indiana court of appeal do to no
fault of his own, martin is housed
on a segregation unit at that time at
wabash valley correctional unit. counsel
charles dugan act with malice intent out
of retaliate because martin filed grievance
and law suit on dugan SEE Kevin martin
v charles dugan 219-cv-134 JLS DIP
App page 13.)

under the Indiana mail-box rule
SEE dewell v state 922 nc 21605
Ind 2010) martin Appeal shall

be deemed filed as of the date martin placed it in prison staff hand to be mailed to the court and if charles dugan did turn in martin legal mail and this interference with martin access to court and also a fundamental right mean the district court ordinarily cannot grant a petition for a writ of habeas corpus arising from a petitioners custody under state court judgment unless the petitioner first has exhausted his available remedies in state court 28 USC 2254-(b)-(3) to follow; state rule 46-A) 1-thru 12) and rule 45-B) by exercising my due diligence and place it in charles dugan hand on 4-11-18 is the day of my timely filing his brief.

The supreme court explained that exception in SEE coleman v Thompson 501 US 722 750 111 Sct 2546 2565 115 L Ed 2d 640 1991) as follows; in all cases in which a state prisoner has defaulted his federal claim's in state court pursuant to an independent and adequate state procedural rule federal habeas review of the claim is barred unless the prisoner can demonstrate cause for the default and actual prejudice martin mail his brief as a result of the alleged violation of federal law under 14th Amendment right and First Amendment and sixth Amendment, The supreme court then went on to explain that an attorney's ignorance or inadvertence is not cause but attorney error

that constitutes ineffective assistance of counsel is cause I'd to support his assertion of counsel's ineffectiveness. Martin attached his correspondence with both of his counsel, one original appellate counsel and trial-court SEE App page 44 thru 59.) relevant in part HERE SEE App. page 82) speaking for itself.

SEE Martinez also requires a petitioner to show that the underlying ineffective-assistance of trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit. Martinez 132 S Ct at 1318-19 - Martinez offered little guidance as to what is a substantial claim for these purposes. It provided only a "cf" citation to, "Miller El v Cockrell 537 US 322 (2003)" describing the standards for certificates of appealability. 132 S Ct at 1319 SEE Miller El held that a certificate of ~~appealability~~ appealability should be granted when a substantial show can be made "by demonstrating that trial counsel was ineffective for not investigate Martin Alibi defense to prepare defense before trial deprive Martin of sixth and 14th Amendment and demonstrating that jurists of reason could disagree with the district court's resolution

or that jurists could conclude the
issues presented ARE Adequate to deserve
encouragement to proceed Further SEE
Miller-E 537 US At 327

This threshold inquiry does not requires
Full consideration Id.

THE martinez dissent predicted the problem
we FACE here, to Establish cause A
prisoner must demonstrate that the
ineffective-assistance of trial counsel
claim is substantial which apparently
mean the claim has At least some
merit, THE court does not Explain
where this substantiality standard
come From see martinez 132 S Ct
At 1332

SEE Whalen / Hunt v Early 233 F3d
1146 9th Cir 2000) Another Examples of
A state-created impediment may be
inadequate prison libraries or
demanding case For Evidentiary hearing
As to whether martin claim that an
unconstitutional impediment existed
because of LACK of information in
the prison law library may be upheld,
cause martin housed at wabash valley
corr Facility where Law library
Excuse to martin was we don't
have them material At this
time in the Law Library
interference with martin
RE search his issue on his

() 35

merit," SEE petitioners traverse

Also THE unconstitutional or illegal
impediment must be created by the
state, " like for this REASON that
bring remedy may include withholding
of the Affidavit for search warrant
and test result by projectile obtain
in this case, Fall under EXculpatory
Evidence in violation of SEE
Bridgely v Maryland 373 US 83 83 S Ct
2531 10 L Ed 2d 215 1963)

maxter EXercised his right by use
the due diligence under 2254-E-) 2
(2) IF the Applicant has Failed to develop
the Factual basis of a claim in state
court proceeding the court shall not
hold an evidentiary hearing on the
claim unless the applicant show that

A Factual predicate that could not have
been previously discovered through
the EXercise of due diligence

maxter Filed multiple request seeking
discovery to prepare before this hearing
SEE APP-page- 82-) App-page-80-
APP-page 72- thru 76-)

THE prosecutorial intent to withholding
EXculpatory Evidence that would
cause own one reasonable doubt on one
jury mind in the jury room.
(36) 36

mean without no justification or
EXCUSE to cheated and commit a
wrongful act. by withholding AFFIDAVIT
For SEARCH warrant and test result
report with motive by Evil to
cheated to win," right,
EVIDENCE cannot be regarded AS
suppress" and the state will not be
Found to have suppress information
when the defendant has access to
EVIDENCE before trial by the EXERCISE
OF REASONABLE diligence Id. HOWEVER
when police or prosecutors conceal
significant EXculpatory or impeaching
material in the state's possession it IS
ordinarily incumbent on the state to
set the record straight SEE
BANK V DUKAKIS 546 US 668 124 S.
ct 1256, 1263 157 LEd 2d 1166 2004

SEE - APP - PAGE - 66 - thru - (68.)
state in relevant part by state
Judge JEFFREY L. SANFORD He
has inspected the clerk's file
and has not Found an AFFIDAVIT
For A SEARCH warrant, nor
was there A SEARCH warrant
Ever issued in your case
that cause and prejudice
show the prosecutorial Act
with malice intent," but
Let remember, 'In Brady

✓ Maryland state in relevant part
THE principle of *Mooney* ✓ *Holohan* is not
punishment of society for misdeeds of a
prosecutor but avoidance of an unfair
trial to the accused. Society wins not
only when the guilty ARE convicted but when
criminal trials ARE FAIR under *Martin* 14
amendment Equal-protection right was violation
by this state court ARE a cause, 'HERE'

SEE *Strickler* ✓ *Garza* 527 U.S. 263 289
119 S.Ct. 1936 194 L.Ed.2d 286 1999)

A defendant is not required to request
specific pieces of exculpatory evidence
in order to be entitled to them, and
is in fact entitled to rely on the state's
representation that it has fulfilled its
duty to provide any such evidence before
trial and the post-conviction hearing. SEE
App. page, 72: 74-76) App. page-80)

Although it is true *Martin* was ~~not~~ unable
to receive the affidavit for search warrant
upon request it in these post conviction
proceeding to be able to inquire into the
fact at the hearing and prove his merit
and the availability of information and
test result interference with *Martin*

First Amendment and 14-amendment right
is not measured in terms of whether the
information is easy or difficult to obtain but
by whether the information is in the
possession of some arm of the state SEE
Orion ✓ *North* 172 F.3d 991-997-98 7th Cir 1999)

Martin notes, he seeking on his appeal review by this court SEE *Cone v Bell* 556 US 449, 472 (2009) *de novo*. For assessing constitutional challenges to state convictions see *Richter* 562 US 103 that will no longer be true in Indiana for at least some *Strickland* claims.

For this reason a Supreme court may review a defaulted claim only in very limited circumstances.

The court may excuse a procedural default only if Martin, (1) demonstrates cause for default and consequent prejudice, or (2) makes a convincing showing of actual innocence, thus establishing that

~~the~~ the failure to review the defaulted claim would result in a fundamental miscarriage of justice *Coleman* 501 US at 749-50)

Cause is an objective factor external to the defense that impedes the presentation of the claim to the state court see *Coleman* 501 US

at 753 SEE *Wedington v Zatecky* 721 F3d 456-465-7th Cir 2013) Attorney Error ordinarily doesn't satisfy the externality requirement because

the defendant's attorney is his agent and the attorney's actions are imputed to his principal SEE *Coleman* 501 US at 753, But counsel error can excuse a

procedural default if the error "is an independent constitutional violation ie, a denial of the Sixth Amendment right to the effective assistance of counsel *Id*. In that situation

the risk of error fall on the state as a corollary to its constitutional duty to provide effective counsel. *Id*,

now HOWE martin trial counsel should investigate martin alibi defense and obtain the video tape that would show (martin) inside this music store at 11:45 AM would have exonerated martin all counsel had to do was obtain the video from the music store which his failure to do meets the first prong of Strickland. And not provide martin with a copy of the discovery, "based upon the fact he did not want to permit a snitch to jump on the case per Tex at 29) infringes upon martin 14-A amendment right to due process. trial counsel should not be at liberty to withhold discovery based upon this arbitrary ground. martin is the person whose life and liberty was at stake he had the right to assume the risk of assisting in his defense even at the risk of exposing himself to further harm. counsel cannot strip martin of the ability to prepare for trial. To this day martin has not been provided with the discovery and the name of the employee of the music store this blatant violation of basic rights constitutes a miscarriage of justice that public confidence in the judicial system requires relief under, chronic, "some violations are of such nature that," prejudice is assumed martin contends this claim meets that standard because not to be permitted to assist in your own defense is fundamental deprivation of basic principles that undermines the outcome of the proceedings.

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THE DECISION OF THE DISTRICT COURT
IS IN CONFLICT WITH THE DECISIONS OF
OTHER CIRCUITS.

Martin notes, this supreme court may reach the
merit of a procedurally barred claim only if martin
can show either cause for the default and prejudice
from the alleged violation of Federal law SEE
coleman v Thompson 511 US 254 256 115
LED 2d 640 (1991) or that there would otherwise
be a fundamental miscarriage of justice SEE
sawyer v whitely 512 S Ct 2514, 2518-19 120
LED 2d 269 (1992) martin contend that deny of
Sixth Amendment right to counsel excuses his
procedural default applies, because counsel failure
to investigate martin alibi defense and martin
overcome procedural default showing cause for
the default and resulting prejudice or by showing
he is actually innocent of the offense see
coleman v Thompson 511 US 254 256 (1991) Failure
to provide the discovery, so martin could assist
in prepare his defense before trial. HERE THE
conviction was reversed.

SEE Brady v Maryland, state in relevant
part, 'District court put his-self in the
shoe of the jury and a conflict with the
supreme court ruled state, There is considerable
doubt as to how much Gerald cotton undisclosed
statement in the affidavit for search warrant
would have done (martin) if it had been
before the jury. It clearly implicated
Gerald cotton as being the one who open
the door was favored to martin deal

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with the identify of the person they saw in the hallway because some witness claim the victim fell from the hallway into the apartment and maccotter said the victim walking inside the apartment then fell and anything inconsistent with the testimony of a state's witness under Brady and we cannot put ourselves in the place of the jury and assume what their view's would have been as to whether it did or did not matter it was Kevin martin Billinger heard that pull the gun on about who saw who on this date, ' would be too dogmatic for us to say that the jury would not have attached any significance to this evidence in considering guilt and innocence of martin.

THESE CASES illustrate the fact that the seventh circuit court of appeal and district court is out of step with this court and with other circuits in its consideration of the SEE Strickland v Washington 466 US 668 687-88 (1984-) prejudice prong CEATIONORI should be granted to correct this error.

conclusion

For these reason A writ of certiorari
should issue to review the judgment and
opinion of the seventh circuit of appeal and
district's court.

Respectfully submitted

KC ~~~~~

Date 1-16-2021

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