

No. 20-8390

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IN THE  
SUPREME COURT OF THE UNITED STATES

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GARY L. WORKMAN  
*PETITIONER*

V.

WARDEN JASON KENT, et al.  
*RESPONDENT*

PETITION FOR REHEARING ON DENIAL OF WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI

GARY L. WORKMAN  
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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR REHEARING ON DENIAL OF WRIT OF CERTIORARI**

Petitioner respectfully prays that this Honorable Court will grant a rehearing in banc to review the judgment denying Writ of Certiorari rendered on October 4, 2021.

**JURISDICTION**

The Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) and 28 U. S. C. § 1257(a).

**GROUND**

Evidence of factual innocence was withheld, petitioner was denied the right to self-representation and the manifest structural errors violated Petitioner's rights to a fair trial and state collateral review. The evidence of the issue(s) presented were not, but are now, available and cognizable for the cause in state collateral review.

**CIRCUMSTANCES**

Petitioner presented evidence of factual innocence in his original Federal Habeas Petition that was not available in original state collateral review.<sup>1</sup> Louisiana law now allows criminal defendants to seek post-conviction relief through claims of factual innocence. Petitioner has filed a successive state post-conviction application raising factual innocence and several Constitutional claims and prays for relief.

The United States Supreme Court has held, actual innocence, if proven, serves as a gateway through which a petitioner may pass when the impediment is a

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<sup>1</sup> Exhibit 27 of the Writ of Certiorari: Computer Expert Report.

procedural bar under the AEDPA. See *McQuiggin v. Perkins*, 569 U.S. 383, 401, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013). This is consistent with the rulings of *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995) and *House v. Bell*, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006).

At one time, *McQuiggin* didn't excuse procedural bars concerning state post-conviction. However, under newly enacted La. Legislative Act 104, August 1, 2021, the procedural objections of La. C. Cr. P. art. 930.4 and La. C. Cr. P. art. 930.8 are not applicable. Furthermore, Louisiana Legislative Act 104 added section (8) to the grounds for relief under La. C. Cr. P. art 930.3, as a gateway through which a Petitioner may pass with a claim of factual innocence.

The report from computer expert, D. Wesley Attaway, is evidence of factual innocence and this evidence was not available to Petitioner prior to trial, at trial or, during his first state collateral review.

Petitioner has also, through due diligence, obtained evidence from the Clerk of Court proving he was denied the right to represent himself during trial *after* attempting to have court appointed counsel removed.<sup>2</sup> A criminal defendant has a Sixth Amendment, U.S. Const. amend. VI, right to conduct his own defense, even if he does so to his detriment, if his decision to do so is voluntary, knowing, and intelligent. *Faretta v California*, 422 US 806, 45 L Ed 2d 562, 95 S Ct 2525.

The structural errors of the trial were so grave that he was denied the right to a fair trial and convicted of a crime that is not a valid offense in the State of Louisiana.

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<sup>2</sup> Exhibit 39 of the Writ of Certiorari: Motion to Replace Counsel.

### CONCLUSION

Petitioner, Gary L. Workman, prays This Honorable Court will agree that these are extraordinary circumstances and will grant the petition for rehearing and request a response from the Clerk.

Petitioner further prays this Honorable Court, grant rehearing or in the alternative, remand this to the U. S. District Court to hold in Stay of Abeyance until state collateral review is complete, at which time he be allowed to proceed or, in the alternative, he be allowed to file a successive petition raising the intervening circumstances above.

  
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Gary L. Workman

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PROOF OF SERVICE

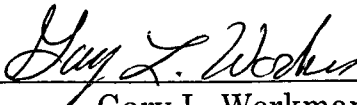
I, Gary L. Workman, do declare that on this date, October 5, 2021, 2021, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United states mail properly addressed to each of them and with first-class postage prepaid or by delivery to a third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Paul D. Connick, Jr.  
District Attorney for Jefferson Parish, Louisiana  
200 Derbigny St. 5<sup>th</sup>. Floor  
Gretna, LA 70053

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 6<sup>th</sup>, 2021.

  
\_\_\_\_\_  
Gary L. Workman

**CERTIFICATION OF COUNSEL**

I, Gary L. Workman, *pro se*, do hereby certify that this Petition for rehearing is restricted to the grounds specified in Rule 44.2 and it is presented in good faith and not for delay, this 6<sup>th</sup> day of October, 2021.

  
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Gary L. Workman (*pro se*)