21-5139

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

DOCKET NO: _____

DONALD M. BOSWELL

Petitioner

vs

STATE OF LOUISIANA

Respondent

Supreme Court, U.S.
FILED
JUL 13 2021
OFFICE OF THE CLERK

ON PETITION FOR WRIT OF HABEAS CORPUS
DUE TO EXTRAORDINARY CIRCUMSTANCES

Brief for Petitioner

PETITIONER FOR WRIT OF HABEAS CORPUS
28 U.S.C. §2241(b)
28 U.S.C. §1651(a)

Respectfully submitted,

S/ Donald Boswell

Donald M. Boswell
DOC #567056
David Wade Correctional Center
670 Bell Hill Road - N5D
Homer, Louisiana 71040-2150

RECEIVED
JUL 19 2021
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Was the denial of Petitioner's request for a Certificate of Appealibility (COA) to file a second or successive feredal habeas corpus for new claims for constitutional substantive vioalitions of his Fifth, Sixth and Fourteenth Amendment rights proper, OR did the Federal Disrtic Court and the Fifth Circuit Court of Appeals fail to give their full consideration to the substantual evidence which the Accused has put forth in support of his prima facie case of a denial of his constutitional right to be competently represented by a qualified attorney at every stage of hsi court proceedings, and thereby the Courts sidestepped the appropriate process by first deciding the merits of his appeal as follows:

> that "Boswell fails to make the requisite prima facie showing. See §2244(b)(3)(C)."

when the decision of the lower court made erroneously without first granting him a COA authorizing the Court of Appeals to review and, therefore, essentually deciding his appeal with out jurisdiction as was the issues presented in the Miller-El v Cockrell, 573 US 322 (2003) case?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

District Attorney for the 26th Judicial District Court of Louisiana:

J. Schuyler Marvin
Courthouse
410 Main Street
Minden, LA 71058-0378

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TABLE OF AUTHORITIES CITED

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

[X] 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 UNKNOWN; 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 B to the petition and is

[ ] reported at UNKNOWN; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[x] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at UNKNOWN; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the SECOND CIRCUIT COURT OF APPEAL court appears at Appendix D to the petition and is

[ ] reported at UNKNOWN; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was MARCH 24, 2021.

[ ] 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: _____, 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. § 1254(1).

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

The date on which the highest state court decided my case was 11/04/20. A copy of that decision appears at Appendix C.

[ ] 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 following statutory and constitutional provisiions are involved in this case.

U.S. CONSTITUTION - AMENDMENT 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, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §2254

(a) The Supreme Court, a Justice therein, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to 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 applicant for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that ---

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

(B)(i) there is an absence of available state corrective process or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

The AEDPA substantially amended the habeas corpus statute codified at 28 U.S.C. §2241 et seg. among other changes, Congress, in 28 U.S.C. §2253, mandated that a state prisoner seeking habeas corpus relief under 28 U.S.C. §2254 had no automatic right to appeal a Federal District Court's denial of such relief. Instead, such a prisoner first had to seek and obtain a certificate of appealability (COA).

28 U.S.C. §2253(c) -which established procedural rules and requires a threshold inquiry into whether a Court of Appeals may properly entertain such an appeal - a COA determination requires an overview of the claims in a habeas corpus petition and a general assessment of their merits, by (1) looking to the District Court's application of AEDPA to a prisoner's constitutional claims, (2) asking whether that resolution was debatable among jurists of reason. This threshold inquiry does not require full consideration of the federal or legal bases addressed in support of the claims.

28 U.S.C. §2253(c)(1), mandates that unless a "circuit justice of judge" issues a COA, an appeal may not be taken to a Federal Court of Appeals. As a result, until a COA has been issued, Court of Appeals lack jurisdiction to rule on the merits of appeals from such habeas corpus petitioners.

28 U.S.C. §2253(c)(2), consistant with the United States Supreme Court's precedant and the text of the habeas corpus statute, a prisoner seeking a COA had to demonstrate a substantial showing of the denial of a federal constitutional right.

28 U.S.C. §2253(c)(2), A prisoner satisfies this standard by demostrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

28 U.S.C. §2253, as amended by the AEDPA, the issuance of a COA to review a Federal District Court's denial of habeas corpus relief to a state-prisoner must not be pro forma or a matter of course.

28 U.S.C. §2254(e)(1), Factual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary; and

28 U.S.C. §2254(d)(2), a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding.

28 U.S.C. §2254

(a) The doctrine of equitable tolling preserves a plaintiff's claims which strict application of the statute of limitations would be inequitable. The petitioner bears the burden of proof concerning equitable tolling, and must demonstrate rare and exceptional circumstances warranting application of the doctrine. The doctrine will not be applied where the applicant failed to diligently pursue harbeas corpus relief under 28 U.S.C. §2554, and ignorance of the law, even for an incarcerated pro se petitioner, generally does not

excuse prompt filing. Courts must consider the individual facts and circumstances of each case in determining whether equitable tolling is appropriate.

(b) An appellate court reviews the court's application for eqitable tolling doctrine for abuse of discretion, and reviews the court's findings of facts for clear error and its determinations of law de novo.

28 U.S.C. §2244

(a) In the context of federal habeas corpus procedures, 28 U.S.C. §2244(d)(2) tolls the limitation provision for filing a 28 U.S.C. §2254 petition during the pendency of certain state court proceedings The time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under the subsection 28 U.S.C. §2244(d)(2).

(b) The 1-year statue of limitations for seeking federal habeas relief from a state-court judgment is tolled while an "application for state post-conviction of other collateral review" "is pending" 28 U.S.C. §2244(d)(2).

**Read naturally, the text of §2244(d)(2) must mean that the statue of limitations is tolled only while state courts review the application.

(c) The United States Court of Appeals for the Fifth Circuit

defines a properly filed state application for post-conviction review as one that conforms with a state's applicable procedural filing requirements, and defines procedural filing requirements as those prerequisites that must be satisfied before a state court will allow a petition to be filed and accorded some level of judicial review.

(d) To be entitled to equitable tolling of a limitations period for filing a claim, litigants must show that (1) the litigants have been pursuing their rights diligently, and (2) some extraordinary circumstances stood in the litigants' way and prevented timely filing.

28 U.S.C. §2244(d)(1)(A)

Refers to "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review."

28 U.S.C. §2263(b)(2)

Contains a limitations period that is tolled "from the date on which the first petition for post-conviction review or other collateral relief is filed until the final state court disposition of such petition."

PETITION FOR A WRIT OF HABEAS CORPUS DUE TO EXTRAORDINARY CIRCUMSTANCES

Petitioner, Donald M. Boswell, now respectfully sets out specifically how and where he has unsuccessfully exhausted all the available remedies in his state courts showing the exceptional circumstances pursuant to Rule 20.4(a) that should warrant the exercise of this Court's descretionary powers of relief where the violations of Brady v Maryland, 373 US 83 (1963), and of his Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights of Due Process that may have unlawfully imprisoned him pursuant to the judgment of conviction and imposed sentence entered in the Webster Parish Court house for Louisiana, docket no. 80,663. The relevant facts and his claims of extraordinary circumstances that have lead up to the Statement of the Case in the instant habeas corpus are listed, in approximate order of filing, herein as follows:

- 1.) On Monday, August 3, 2009, at 9:30am, and unbeknownst to him, the record shows that the Grand Jury did indict Mr. Boswell on the capital offense of Aggravated Rape and Indecent Behavior of a Juvenile, even though the alleged victim was still allowed to live with the Defendant until August 6, 2009, when she left to spend a (7) day week at her dad's house. However, Mr. Boswell was never accused of any wrong doing by the victim's parents until (8) eight days after his secret indictment, when on August 11, 2009, the first initial police report was filed charging him with "a possible att. carnal knowledge of a juvenile" and an arrest warrant was issued, but was never served by the police.

• 2.) A TRO (Temporary Restraining Order) was issued and on August 19, 2009, Petitioner retained private counsel to represent him when the Order was enforced by the court and Petitioner was then informed, by his attorney, to live his life as a free man.

• 3.) On October 6, 2009, pursuant to a NO KNOCK SEARCH WARRANT, specific to his residence, and an arrest warrant was issued at 9:30pm, the Sheriff's Office and an FBI ASAC agent did execute a search of Mr. Boswell's residence, collecting items of interest, many of the items having no nexus between any criminal activity and the items taken, nor were they listed on the search warrant to be seized. No evidence bags or latex gloves were used to collect the evidence. The items were just piled into the back of Detective Scotty Tucker's Dodge Durango. A violation of Boswell's Fourth Amendment right of gcvernment search and seizure.

• 4.) Petitioner arrived to his residence shortly thereafter the search had begun and parked his truck at a neighbors house (3) houses away. When he stepped foot on to his property he was then arrested by Det. Tucker and Mirandized. His keys and wallets were also confiscated. At which time Petitioner informed Det. Tucker that he already had an attorney retained and wished to speak to him. But Det. Tucker stated it was too late at night to call an attorney and continued to initiate his interrogation of Mr. Boswell.

• 5.) When Petitioner was being transported to the Sheriff's Office he noticed a deputy unlawfully enter another person's yard to retreive his truck and drove it onto his property to search it as well pursuant to the warrant specific to any vehicles being

already on his property.

● 6.) Once at the Sheriff's Office, Det. Tucker continued a police initiated start-n-stop technique to illicit answers from Mr. Boswell during his interrogation and without his already retained counsel present. A Fifth Amendment violation

● 7.) Petitioner asked (4) four more times to speak with his attorney, but Det. Tucker stated he could have his attorney present in the morning during him formal interrogation.

● 8.) Petitioner was threatened to confess, that if he did not confess to the charges then he would be placed in the prison general population and expose him as a former cop and baby raper. He was then promised that if he gave a voluntary statement then he would receive no prosecution since he was "One of us. You know a deputy".

● 9.) During his arraignment, on October 9, 2009, his private counsel had to recuse himself due to fact that his father was picked as the trial judge in Mr. Boswell's case. A Public Defender was then assigned, but was not present in court that day. A substitute attorney entered a plea of not guilty on the capital indictment charge of Aggravated Rape and Indecent Behavior with a Juvenile.

● 10.) The Public Defender took over 90 days to make contact with Mr. Boswell. At which time the Attorney, Larrion Hillman, stated that his case would be thrown out at trial. He gave a copy of discovery papers to Petitioner that contained many discrepancies false and misleading statements in the police report but counsel did not care since he was going to get the case thrown out anyway.

● 11.) April 5, 2010 counsel was (3) hours late for the plea

hearing, at which time the courtroom was cleared of all persons except members of the court, the Defendant and his mother. Counsel was given a few minutes to discuss the plea deal with his client in a private court chamber. Counsel did advise that he had been hand picked by the district attorney to only process the defendant though the system, he did not care if the Defendant was guilty or not, he stated there will be no trial allowed and if Mr. Boswell insisted on going to trial then he would receive an automatic life sentence and that the district attorney had the option of seeking the death penalty on the capital offense.

12.) Instead Petitioner was to take the plea offer of an amended charge for an Attempted Aggravated Rape and with the lesser Indecent Behavior charge dropped. Then counsel incorrectly stated that Mr. Boswell could receive a possible sentence of 0-5 years or a suspention of sentence or probation but that would be at the judge's discretion to do so.

13.) Counsel then coached Mr. Boswell how to answer the judge's questions and when asked if he had been threatened or coerced or promised anything to accept the plea deal he was advised to say NO.

14.) During plea hearing the Judge advised Defendant of the rights he would be giving up for accepting a plea, then, he too, incorrectly stated the sentencing range of (0-50) years when he told the Defendant could receive a sentence of (0-49½) years and that the sentence benefits were unknown to the court at that time, but would be determined at his sentencing. Prosecution made no recommendations for sentence imposed.

15.) Mr. Boswell unknowingly and unintelligently entered into a plea of guilty to avoid a life sentence or the possibility of the death penalty. When the judge asked Mr. Boswell if he had been threatened or coerced into accepting the State's plea, he stated YES he had, but his counsel slapped him on his arm and asked the court for a brief minute to consult his client. Mr. Hillman strongly told Petitioner that he was to tell the judge NO.

Mr. Boswell then followed his attorney's direction and changed his answer to NO he had not been threatened or coereced as the record will reflect.

16.) Court documents show that there was no official plea agreement ever entered into record.

17.) June 21, 2010, at his sentencing hearing the judge did ask once more if the Defendant had been threatened or coereced to accept his plea. When Mr. Boswell said YES he had, again his attorney slapped him on his arm and told him in no uncertain terms to say NO. Mr. Boswell changed his answer to NO as he was told.

18.) The trial judge, based on belief and attorney statement, was mislead of the facts, in his case, by the State, and therefore, the aggravating factors he listed in sentencing Mr. Boswell were incorrectly applied making his case to appear worse than the truth.

After a lenghthy speach the judge imposed a maximun sentence of 49½ years then reduced it due to Mr. Boswell's health to 48 yrs flat without benefit of sentence. He then remanded Boswell to the Dept' of Corrections even though his attorney had said he would only get between 0 and 5 years with possible sentence benefits.

● 19.) After his sentence was imposed and executed the Assist. District Attorney stood up and had a conversation with the judge, but without Boswell's counsel, requesting an increase in punishment by making Mr. Boswell pay an additional $4800.00 to the victim's father for any future counseling for the victim that the state was already paying for in another criminal case dealing with the victim's grandfather for his offenses, also all of the items seized from Mr. Boswell's house were to be sold and that money was to be given to the victim's family as well.

● 20.) Five years later during his evidentiary hearing the ADA angerly stated that the Defendant should have known that the state was going to charge his with victim restitution. Which is a violation of state statute, especially since his sentence imposed did not carry the benefit of probation to permit victim restitution neither were the rules and proceedures followed to determine if restitution is required. Nor was it part of his plea agreement.

● 21.) The judge agreed and then added the sentence enhancement even though Petitioner's sentence did not carry benefit of any restitution which is a condition of probation. His attorney did not object to anything the judge added to the sentence, but simply stated that he would take care of it on direct appeal.

● 22.) Counsel filed a basic Motion to Reconsider Sentence that briefly stated Defendant was a productive member of society and that he owned his won business with no criminal history and he sentence should be reconsidered. Which was immediately denied.

● 23.) Petitioner's family hired a private Attorney, Marty

GrossJean-Pearson, in July 2010 to file an appeal on his behalf to the Second Circuit Court of Appeal for Louisiana. The district court refused to allow his counsel to have a copy of his case file. Mr. Boswell gave Ms. Pearson most of his copy of his discovery paper work so an appeal could be made. But Ms. Pearson filed his appeal based on hearsay by the District Attorny's Office and other false statements that was incorrect and misleading information that Mr. Boswell did not say or do in his case. Ms. Pearson never provided a copy of her brief to Petitioner for him to review and she waited more than 6 months to file said appeal.

The appellate court denied her appeal citing " Improper format by the Attorney". And the discrepancies have gone uncorrected to this day.

24.) Petitioner, along with 19 other clients filed a claim against Ms. Pearson and she was ultimately disbarred from practicing law for life in 2012.

25.) Then his prison inmate counsel filed a Supervisory Writ to Review to the Louisiana Supreme Court (LSC) where the court lost his case file for several months once found it was immediately denied citing defendant must file his Post-Conviction Relief (PCR) first before the above appeal could be ruled on.

26.) Petitioner filed his first PCR, pro se', on May 8, 2012 for the following (3) claims:

1. Sixth Amendment Violation - Right to Effective Assistance of Counsel
2. Excessive Sentence
3. Illegal Sentence

However, the district court lost his PCR application for over a year before it was discovered again.

⊕ 27.) After transversing back and forth with his district court and until an undersigned contradictor Attorney, Tristan Gilley was appointed to represent him on February 28, 2013.

Both the State and defense ccunsel filed multiple memorandums starting June 28, 2013 through October 28, 2013 for Motions for Leave to Supplement Post-Conviction petitions were settled.

An evidentairy hearing was ultimately granted and held on January 24, 2014. The argument became whether or not a Boykin violation would serve as a basis for granting the Defenant's post-conviction relief claims.

March 11, 2014, the court issued a written ruling denying Petitioner's application for post-conviction.

Petitioner filed a Motion for Rehearing and Reconsideration, which was granted and set for rehearing on April 21, 2014.

At the rehearing the court ordered both the State and the Defendant to file additional written briefs to be heard on June 9, 2014.

There were (5) different hearings in total. At each hearing the ADA would inform the court that they had lost Petitioner's case file in a flood. The ADA even requested that the judge to Order defense counsel (30) days to find Petitioner's case file "If he could". The judge granted the Order, but no case file was ever found. So finally on the 5th or last hearing the judge asked the ADA "If you don't have a case file of the defendant, then how

are you keeping him in prison?"

The ADA responded "About that, we need to have a private side bar with you and without the defense." After said side bar the judge denied post-conviction relief to the Defendant and would hear no more about the case. - case dismissed.

His counsel made an oral request to file an appeal, which was granted. Again case denied and dismissed on June 9, 2014.

28.) Petitioner in a civil matter filed a claim of a Fourth Amendment violation of unlawful seizure of property in a criminal matter and for not properly returning the items according to the state statute. However, the trial judge in Boswell's case was going to retire in a few months and left that file for the new incoming judge to deal with. The new District Judge, Charles Jacobs, did respond in letter to Mr. Boswell concerning his lawsuit and cited that he refused to allow Petitioner forward litigation for his claims against the state and his case was frozen in court.

29.) Attorney Gilley in issue #26 filed an appeal on August 6, 2014 to the 2nd C.O.A. but never gave a copy to Petitioner or even let him know that his appeal had been denied and then counsel abandoned him. The 2nd C.O.A. also did not let Petitioner know of the results of his appeal.

30.) After several months had past without hearing from his attorney Petitioner inquired to the appellate court of the status of his appeal only to learn of its denied.

Petitioner filed a Writ of Mandamus requesting the court order Mr. Gilley to provide him with a copy of his appeal brief and denial.

The appellate court granted his writ of mandamus.

⊕ 31.) Petitioner also filed several Motions for Production of Documents to his district court each time the court refused to grant his request each time citing different reasons. Finally after his family went and spoke to the Clerk of Court, she said if he would file another motion she would make the copies he needed at a cost of #1.50 per page.

Petitioner followed the Clerk's directions and filed another motion only to receive a response that stated each copy will cost him $35.00 per page and all the pertinent documents he requested could not be reproduced since they had been destroyed in a flood of their file storage room. Petitioner did not receive any of the documents he had requested.

⊕ 32.) In a seperate incident back in 2010 when Petitioner had to give most of his case flie to Ms. Pearson so she could file an appeal. He later filed a Motion for Copy of Public Record for another copy of his Bill of Indictment requesting an explaination as to why he had been indicted on August 3, 2009, (8) days prior to ever being accused of any wrong doing. The Clerk mailed him a copy of his Bill of Indictment with a new date stamped in red of October 26, 2099, which is 20 days after his arrest. Also it showed that the district attorney had handwritten a change in the dates of offense after his indictment expanding the time frame from one day to a period of over (9) nine months.

⊕ 33.) Petitioner questioned the Clerk as to why the dates had been changed on his indictment. The Clerk responded that those were

the dates on record for his indictment. After further (insider) research Petitioner learned that on October 26, 2009, the Grand Jury did not convene to indict anyone. That October 26th had been a randum date chosen to make it appear as if he had been indicted after his arrest rather that before his accusal and it was the district attorney, himself, who had made the changes to Boswell's Bill of Indictment by placing his own signature on the indictment in his handwritting.

The Clerk made no further response to his request concerning his Bill of Indictment.

34.) Immediately after receiving a denial from the 2nd C.O.A. Petitioner filed a Supervisory Writ to the LSC (11) days later.

The LSC received his brief on January 6, 2015 and assigned a docket number. However, a huge discrepancy occured and somehow a court clerk looked up the wrong docket number from the past for the court to review and his case was dismissed as "UNTIMELY" filed.

Through correspondence the discrepacy was eventually corrected and his writ was reinstated as "pending review by the LSC", but no further movement was made.

When Petitioner mailed a letter seeking a progress report on his case file the clerk AGAIN inadvertently mixed up his docket numbers further complicating matters and the files were mixed up even worse than before.

On April 19, 2016, he placed a legal call to the Clerk of the Louisiana Supreme Court, after searching, the CLerk advised him that his writ had been lost months ago and he was given permission to

refile his original writ and granted another new docket number.

For the next (12) months, Mr. Boswell continued to monitor his wirt progress via phone, website, or by written correspondence with the court's clerk, always receiving a response of "Writ Still Pending Review".

On May 19, 2017, Mr. Boswell received a letter of denial of his Supervisory Writ citing "WRIT NOT CONSIDERED as UNTIMELY FILED" due to the January 6, 2015 discrepancy from the fault of the appellate court and that of the Louisiana Supreme Court.

After a family member called the Chief Clerk for the LSC, Mr. Olivier, concerning the above denial, the Clerk gave permission for Mr. Boswell to resubmit a new brief for the court to review.

Petitioner Boswell in June of 2017 refiled his original criminal brief and did also file an Application for Supervisory Writ on a civil matter from the denial of the 2nd C.O.A. to the LSC for both to be reviewed.

LSC denied both writs citing AGAIN due to his untimely filing of each writ his writs were "NOT CONSIDERED" because the clerk from the 2nd C.O.A. and the clerk of the LSC had mixed up his docket numbers, therefore, the court issued a statement to Mr. Boswell that he has exhausted all his state remedies.

e 35.) In the meantime Petitioner discovered New Evidence in his case and filed a 2nd Post-Conviction Application on September 27, 2017 for the following (2) claims:

1. No Plea Agreement - on record
2. Sixth and Fourteenth Amendment violations for Right to

> Effective Assistance of Counsel - because his defense counsel was unqualified to represent him in a capital case, a violation of the rules set forth by the LA Supreme Court for Part 1, Rule XXXI(A)(1)(a).

The district court denied Petitioner's post-conviction application as "previously raised similar claims" on November 6, 2017 without ever reviewing the merits of his claims.

36.) Petitioner appealed to the 2nd C.O.A. where his case file was again lost, once discovered was denied on January 25, 2018 as "On the Showing Made."

37.) Petitioner then filed a Supervisory Writ to Review to the LSC on February 5, 2018, but he never received a confirmation letter. His family called the Chief Clerk and was advised that the court had not received said writ application, even though it had been sent as certified mail from his prison. He was told to refile his writ which he did on March 1, 2018, again via certified mail.

38.) While he "writ was still pending review" Mr. Boswell prepared and filed an application for his first Habeas Corpus pursuant to §2244(d)(2) on March 16, 2018 via certified mail. Again, his application was lost if the federal district court for over 100 days before the error was discovered.

The record suggest that the state-created impediments that have prevented the filings of Mr. Boswell's petitions for writ of habeas corpus in a timely manner, See 28 U.S.C. §2244(d)(1)(b), due to the afore mentioned lost or mixed up docket numbers by the state and even in the federal district court.

39.) Petitioner later learned that his Fifth Amendment right

had been violated and did find state procedural statues that allowed him to file, on December 10, 2019, a third Post-Conviction Relief Application to his district court raising the follwing (2) claims:

1. Confession obtained in violation of the Louisiana and US Constitution of the Fifth Amendment protection against self-incrimination without prior, to his arrest, retained counsel present during interrogation.

2. Violation of the Louisiana and US Constitution to the Sixth Amendment to the states by the terms of the Fourteenth AMendment right to effective assistance of counsel when counsel refused to file a motion to suppress confession.

● 40.) The district court denied his PCR on December 23, 2019, citing "court has previously Ruled on Petitioner's allegations regarding ineffective assistance of counsel as repetitive."

● 41.) January 16, 2020, Petitioner filed a Supervisory Writ to Review the district courts decision. On March 19, 2020, the appellate court Ruled his writ as "WRIT NOT CONSIDERED", citing Applicatant has failed to include copies of any filing made of Rulings of the trial court.

● 42.) On April 6, 2020, Petitioner did file an Application for Supervisory Writ to Review to the LSC citing that he had, indeed, included the whole exhibit content within and along with his application for supervisory writ to review to the 2nd C.O.A. via certified mail which included a weight amount. But somehow all his exhibits had been lost or misplaced after leaving the prison mailroom or the appellate court simply misplaced his exhibits again themselves.

43.) Then covid hit and the courts were shut down or delayed, but on November 4, 2020, the LSC denied Petitioner's Writ Application without reasons.

For all the above reasons the merits of Mr. Boswell's claims have always been denied him based on some procedural error, that is of not fault of his own, but rather is a state-created impediment that has prevented the merits of his claims from having ever been reviewed properly by any court.

There is a "Subtantive Due Process" in his claims, which is a Fourteenth Amendment violation, that bars certain arbitary wrongful government actions regardless of fairness of procedures used to implement them and, therefore, must be remedied by immediate dismissal of charges.

STATEMENT OF THE CASE

Petitioner, after the fact, found state proceedural statute that allowed him to file a thrid post-conviction application for the two claims of a denial to a substantial constitutional right listed therein which he diligently pursued all the way through to his state's highest court DENIED on November 04, 2020.

Mr. Boswell filed, on December 22, 2020, a second or successive federal habeas corpus for two claims, both are new issues of a substantial showing of the denial of his constitutional Fifth, Sixth and Fourteenth Amendment rights of due process, docket of (Case No. 5:20-CV-01609 SEC P), showing the state's violations, through police initated questioning during his interrogation, by way of random and manipulative conversation using multiple start-stop techniuqes, threats of harm , and offerings of false promises of no prosecution. That did illicit a coerced and unconstitutionally obtained a self-incriminated confession, of a capital offense, from the Accused without allowing his attorney to be present, even after he had asked to speak with his private attorney (retained 2 months prior to his arrest), 5 different times, that night, during his police interrogation. That attorney later had to recuse himself for conflict of interest since his father had been assigned as the trial court judge in the Accused's case.

A new court-appointed attorney was then assigned to represent him. Said attorney did refuse to file a motion to suppress the Petitioner's unconstitutionally obtained confession for without, there more than likely would have been no conviction for the State.

The above claims are the original results of a reverseable Constitutional Sixth Amendment violation by the district judge when, during his arreignment, he did assign an incompetent and a very unqualified attorney, hand picked by the district attorney, to represent Mr. Boswell as he was originally indicted on the capital charge of Aggravated Rape and a lesser charge of Indecent Behavior with a Juvenile. The district court judge failed to institute the rules set forth by the Louisiana Supreme Court pertaining to the defense of indigent defendants in a capital case. Where according to Part 1. RULES PERTAINING TO THE DEFENSE OF INDIGENTS

Rule XXXI (A)(1)(a) - Indigent Defender Standards

provides: In any capital case in which a defendant is found to be indigent, the court shall appoint no less than (2) attorneys to represent the defendant. At least two of the appointed attorneys must be certified as qualified to serve in capital case, inter alia.

Petitioner Boswell avers that he was deprived of his constitutional right to effective assistance of counsel in the very beginning of his court proceedings when the district court erred in assigning ONLY ONE (1) attorney, a Mr. Larrion Hillman, who was a small personal injury and civil attorney with very little criminal experience. Mr. Hillman was NOT qualified to nor certified by the LIDA Board to handle capital cases and certainly not by himself.

Which leads itself to the DENIAL of the habeas corpus at hand, where once filed the federal District Court Clerk misread the title on his application and mistakenly mailed said habeas back to his State's Fifth Circuit Court of Appeal rather than to the Federal

A provision that sets forth a 1-year statute of limitations for seeking federal habeas relief from a state-court judgment is tolled while an "application for state post-conviction or other collateral review" "is pending." See also Corey v Saffold.

The District Court's Report and Recommendation DENIED his habeas application as UNITMELY filed and he was given (14) days to give written objection. In Petitioner's returned objection he did state the untimely filing was NOT HIS FAULT, but rather the fault of the District Clerk's and he further explained by showing a chronological style list of his filing dates and that nearly all of his pro se' state, including in his federal, appeals had either been lost or misfiled and delayed by state-created impediments by all his state's courts for years on end and he had certified proof of his timely filings in said courts.

Petitioner also renewed his request to the Court of Appeals for the Fifth Circuit for a COA on September 14, 2018 and on April 02, 2019 (Case No. 18-30931) and was DENIED as well by responding as follows, in part:

> "Boswell contends that, due to several alleged errors by state court officials in processing his post-conviction filing, his §2254 petition should be considered timely filed through application of 28 U.S.C. § 2244(d)(1)(B) because he encounted state-created impediments. He also asserts that he is entitled to equitable tolling on account of the alleged state court processing errors and his diligence in pursuing relief.
>
> Because he has failed to make the requisite showing, Boswell's application for a COA is DENIED.

signed: KURT D. ENGELHARDT
U.S. CIRCUIT JUDGE "

Therefore, because the lower court's decision was erroneous in DENYING Petitioner COA based on errors of procedural processing for relief rather than on the merits of prima facie for "a substantial showing of the denial of a constitutional right," have never been reviewed in either his first nor his current application for a second or successive habeas relief and should still be considered new claims for review where a COA is issued.

REASONS FOR GRANTING THE PETITION

The rights of an accused to be represented by competent counsel is fundamentally established by the guarantees of the Sixth Amendment. The jurisprudence has consistantly held that the utmost significance of their fundamental right is particularly importance nationally in the care of indigent defendants at all stages of their criminal litigation process, from pre-trial to trial all the way through post-conviction.

Indigent defendants, and indeed non-indigent defendants as well, are all adversely affected by the appointment of, or engagement of, incompetent counsel. This is, again, particularly significant in the case of court-appointed attorneys. Trial courts, as the gatekeepers of the justice system, play an obviously vital role in ensuring the integrity of the criminal litigation process, as it relates specifically to the administration of justice, by appointing qualified and competent counsel to represent indigent defendants. This is not a simple "rubber stamp" process. Indigents, like the defendant in the instant habeas corpus at hand here, are fully entitled to the same fundamental constitutional rights as non-indigent defendants. Their guarantees are not sacrificed because of their poverty or financial deficiences. To the contrary, because of their inability to select qualified, reputable and competent counsel of their choosing, the role of the trial court to ensure such representation in accordance with the Sixth Amendment is enhanced, and should always be a paramount consideration in the early stages of the attorney-client engagement.

Material constitutional violations, especially as the severity of injustice has been brought to light through recent events in this country, should not be cast aside due to superfluous procedural deficiences, ease of disposition, or convience. Every simgle defendant similarly situated, as the defendant here in the instant habeas, should receive proper judicial scrutiny and consideration of blatant, and potentially devastating mistakes resulting in violations of a defendant's constitutional rights. Nothing in this great country is more important than the liberties, rights and guarantees offered to individuals by our magnificant constitution. It should never be disregarded, abused or improperly applied. The catastrophe inflicted by unchecked constitutional violations is a national disease. The power to cure rest within the great authority of this, the Highest Court in the land. Please, allow the cause of constitutional justice to guide. The new directive must come from the top to ensure justice for all.

On certiorari, the Supreme Court reversed and remanded a similar case involving the same District Court and Court of Appeals for the Fifth Circuit for the DENIAL a COA -- Miller-El v Cockrell, 537 US 322, 154 LED.2d 931, 123 S.Ct. 1029 (Feb, 25, 2003). In an opinion by Kennedy, J., joined by Rebnquist, Ch.J., and Stevens, O'Conner, Souter, Breyer, J.J., and both the late Scalia and Ginsburg, --

(in the instant writ for certiorari the lauguage is used from the above cited case that applies in part).

-- it was held that:

Under the standars imposed by the Antiterrorism and Effective *pg. 935 Death Penalty Act of 1996 (AEDPA)(PL 104-132) before a Federal Court of Appeals may properly issue a certificate of appealability (COA) to review a Federal District Court's denial of habeas corpus relief, when a prisoner seeks permission to initiate appellate review of such a denial, the Court of Appeals should limit its examination to a threshold inquiry into the underlying merits of the prisoner's claims, rather than ruling on the merit of the prisoner's claims, for (1) a COA determination is a seperate proceeding, one distinct from the underlying merits; (2) deciding the substance of an appeal, in what should only be a threshold inquiry, undermines the concept of a COA; and (3) the question is debatability of the underlying federal constitutional claims, not the resolution of that debate. Thus, consistant with the United States Supreme Court's prior precedent and the text of the habeas corpus statute (in 28 USCS §2253(c)(2)), a prisoner seeking a COA need only demonstrate a substantial showing of the denial of a constitutional right. Moreover, a prisoner satifies this standard by demonstrating that jurists of reason could (1) disagree with the District Court's resolution of the prisoner's federal constitutional claims, or (2) conclude the issue presented are adequate to deserve encouragement to proceed further. Under 28 USCS § 2253 (c)-which establishes procedural rules and requires a threshold inquiry into whether a Court of Appeals may properly entertain such an appeal-a COA determination requires an overview of the

claims in a habeas corpus petition and a general assessment of their merits, by (1) looking to the District Court's application of AEDPA to a prisoner's constitutional claims, and (2) asking whether that resolution was debatable among jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it.

Accordingly, a Court of Appeals should not decline an application for a COA merely because the Court of Appeals believes that the applicant will not demonstrate an entitlement to relief, for (1) it is consistent with §2253 that a COA will issue in some instances where there is no certainty of ultimate relief, and (2) when a COA is sought, the whole premise is that the prisoner has already failed in that endeaver.

Under the standards of the AEDPA-where Congress, in 28 USCS § 2253, has mandated that a state prisoner seeking habeas corpus relief under 28 USCS § 2254 has no automatic right to appeal a denial of such relief and, instead, must first seek and obtain a certificate of appealability (COA)-this reqirement is a jurisdictional prerequisite, because 28 USCS § 2253(c)(1) mandates that unless a "circuit justice or judge" issues a COA, an appeal may not be taken to a Federal Court of Appeals. As a result, until a COA has been issued, Courts of Appeals lack jurisdiction to rule on merits of appeals from such habeas corpus petitioners. Moreover, when a Court of Appeals sidesteps the appropriate process by first

deciding the merits of an appeal-and then justifying the *pg. 936 Court of Appeals' denial of a COA on the basis of the Court of Appeals' adjudication of the actual merits-the Court of Appeals is in essence deciding an appeal without jurisdiction.

Which is what the Court of Appeals for the Fifth Circuit did in the instant Boswell writ when the Court denial him a COA on more than one reason in both of his first and second or successive habeas applications. In his first attempt to seek a COA (Case No. 18-30931) the Court of Appeals denied him on the base as time barred and then on further review stated that he did not make the requisite showing of "a substantial showing of the denial of a constitutional right" and whether the district court was correct in its procedural ruling.

Then again in Petitioner's recent attempt to obtain a COA of (Case No. 21-30104) the Fifth Circuit Court of Appeals stated that his claims had been raised in his prior 28 U.S.C. § 2254 application and after further review the Court concluded that Mr. Boswell fails to make the requisite prime facie showing that his attorney refused to suppress his unconstitutionally obtained and coerced confession.

In this Honorable Supreme Court's prior precedent and text of the Habeas corpus statue (in 28 USCS § 2253(c)(2), a prisoner seeking a COA need only demonstrate a substantial showing of the denial of a constitutional right. Moreover, a prisoner satisfies this standard by demonstaring that jurists of reason could (1) disagree with the District Court's resolution of the prisoner's federal constitutional claims, or (2) concludes the issues presented

are adequate to deserve encouragement further. In Petitioner's habeas petition he satisfied not one but both of these standards by substantial showing that his Sixth Amendment right was denied him when authorities coerced a police-initiated confession from the Petitioner without allowing his attorney, retained prior to his arrest, to be present during his interrogation. Also when the district court made a reversable error by failing to institute the rules set forth by the Louisiana Supreme Court pertaining to the defense of indigent defenders in a capital case. When the judge assigned a court-appointed attorney to represent Mr. Boswell who was not qualified or certified by the LIDA Board to represent him in his capital case. At that moment Mr. Boswell was denied the established fundamental guarantees provided for in the U.S. Constitution set forth in the great country by our forefathers and the framers of the Constitution itself. Namely the great-great grandfathers of the Petitioner's like James Maddison and before that John Quincy Adams and his father, John Adams, before that. If these framers of the U.S. Constitution were thinking about how important the liberties, rights, and guarantees that should be afforded to every individual and if their own direct descendants cannot receive equal justice, then one should ask, what was the purpose of them even writing any of this country's constitution or the Bill of Rights?

Under 28 USCS §2253 an amended by AEDPC, the issuance of a certificate of appealability (COA) to receive a Federal District Court's denial of habeas corpus relief to a state prisoner must not

be pro forma or a matter of course, for:

(1) Statutes such as AEDPA have placed more, rather than fewer, restrictions on the power of federal courts to grant writs of habeas corpus to state prisoners.

(2) The concept of a threshold, or gateway, test as a prerequisite to appealability was not an innovation of AEDPA.

(3) Instead, Congress-by enacting AEDPA and using the specific standards which the United States Supreme Court has elaborated earlier for the threshold test-confirmed the necessity and the requirement of differential treatment for those appeals deserving of attention from those that plainly do not.

While a state prisoner seeking a certificate of appealability (COA), under the standards imposed by the ADEPA, to review a Federal District Court's denial of habeas corpus relief must prove something more than the absense of frivolity or existence of mere "good faith" on the prisoner's part, the prisoner is not required to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus, for a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration that the prisoner will not prevail. Instead, for COA purposes, where a District Court has rejected a state prisoner's federal constitutional claims on the merits, the showing required to satisfy 28 USCS § 2253(c) is straightforward, that is, the prisoner must demonstrate that reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong.

However, in the habeas application at hand, the District

Court and the Court of Appeals both denied Petitioner's COA request for a "substantial showing of a denial of his constitutional right as having been priviously raised in his prior § 2254 application even though the merits of his first habeas claims were never considered or reviewed, but rather his request for a COA then was denied as UNTIMELY filed due to the fault of the District Clerk's carelessness. After further review the Court of Appeals for the Fifth Circuit decided that Petitioner had failed to make the requisite prima facie showing of the denial of a constitutional right.

Mr. Boswell in his habeas corpus did demonstrate that any reasonable jurists would find the District Court's assessment of his constitutional claims debatable and wrong in that his Fifth, Sixth and Fourteenth Amendment rights had been violated and denied him when he was interrogated without his attorney present and a unconstitutional confession was obtained.

Then again when his district court erroneously appointed a public defender to represent him in his capital case who was neither qualified to or certified by the LIDA Board to represent an indigent defendant in a capital case as required by the rules set forth by the Louisiana Supreme Court Rule XXXI, when the defense counsel refused to file a motion to suppress his coerced and unconstitutionally obtained confession and also further talked his client into entering an unknowingly and unintelligently made plea of guilty that ultimately resulted in his conviction.

When a habeas applicant seeks a COA, the Court of Appeals should limit its examination to a threshold inquiry into the underlying merits of his claims. E.g., Slack v McDanial, 529 US, at 481 146 L Ed.2d 542, 120 S Ct. 1595. The COA determination *pg. 950 under § 2253(c) requires an overview of the claim in the habeas petition and a general assessment of their merits. We look to the District Court's application of AEDPA to petitioner's constitutional claims and ask whether that resolution was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it. When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

To that end, our opinion in Slack held that a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in Slack would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with § 2253 that a COA will issue in some instances where there is no certainty if ultimate relief. After all, when a COA is sought, the whole premise is that the prisoner "'has already failed in that endeavor.'" Barefoot,

supra, at 893, n4, 77 L Ed.2d 1090, 103 S.Ct. 3383.

Many Court of Appeals decisions have applications for a COA only after concluding that the applicant was not entitled to habeas relief on the merits-without even analyzing whether the applicant had made a substantial showing of a denial of a constitutional right. See, e.g., Kasi v Angelone, 300 F.3d 487 (CA4 2002); Wheat v Johnson, 238 F.3d 537 US 349, (CA5 2002). Today the United States Supreme Court disapproves this approach, which improperly resolves the merits of the appeal during the COA stage.

Citing this Court's decision in Slack v McDanial, the Court reasoned that "[a] petitioner makes a 'substantial showing' when he demonstrates that the petition involves issues which are debatable among jurists of reason, that another court could resolve the issues differently, or that the issues are adequate to serve encouragement to proceed further.

As an appellate court reviewing a habeas petition, it is required by § 2254(d)(2) to presume the state court findings correct unless the appellate court determines that the findings result in a decision which is unreasonable in light of the evidence presented.

In the instant Boswell case at hand, his state district court's decision to deny his relief in his post-conviction on (2) claims was unreasonable in light of the evidence presented of a substanital showing of denial of his constitutional right and ineffective assistance of counsel for defense refusing to file a motion to suppress.

He filed his PCR relief application on December 10, 2019, but the Clerk of Court again lost or misplaced his application and once found, was then denied on December 23, 2019, as UNTIMELY and, citing court has previously ruled on Petitioner's allegation regarding ineffective assistance of counsel as repetitive. Without reviewing the merits of the evidence presented of the denial of his constitutional rights resulting in a decision contrary to clearly established federal laws as determined by this Honorable Court.

Petitioner appealed to the next appellate court where all his appeal's exhibits were somehow mysteriously missing. The appellate court denied him as "WRIT NOT CONSIDERED" on Petitioner's petition seeking supervisory writ to review, citing applicant has failed to include copies of any filings made or Ruling of the trial court. Without reviewing his writ application he was denied.

Petitioner appealed to his state's supreme court where he was again denied as "WRIT NOT CONSIDERED" without reporting a reason for the denial.

After filing a second or successive habeas to the Federal District Court,[where the Clerk mismailed to the wrong court and once the mistake was corrected], his application was DISMISSED for lack of jurisdiction, citing he had not received a COA of authorization from the Fifth Circuit.

Petitioner renewed his request for a COA to the Court of Appeals for the Fifth Circuit, and it, too, was also denied, citing his first claim having priviously been raised in prior § 2254 and the second claim as having failed to make the requisite prima facie

showing of a denial of a constitutional right.

Ever since the beginning filings of Mr. Boswell's claims for the denial of his constitutional rights, the merits of his claims have never been reviewed of considered due to state-created impediments in his filing process.

Petitioner Boswell is now seeking a restoration or refresher in the year 2021 of this Court's Ruling made back in the 2003 case of Miller-El v Cockrell for the established fundamental rights set forth in the U.S. Constitution by its framers. So that when any state-prisoner, and including the Petitioner himself, is caught in a similar situation requesting a COA for habeas relief in a federal court for the denial of their constitutional rights, they are given a fuller consideration of the circumstances and of the substantial evidence which the accused has put forth in support of his/her prima facie showing requesting a COA to review without being arbitrarily denied the COA request to review for circumstances they encounter beyond their control, as prisoners, by the lower court-created impediments, while diligently pursuing said relief, filed, often as time barred, among other reasons, for denial of that very constitutional right, as it has been for the Petitioner in his own habeas corpus case at hand.

A COA inquiry asks only if the District Court's decision was debatable.

The COA, standing alone,... does not assert a grievance against anyone, does not seek remedy or redress for any legal injury, and does not even require a 'party' on the other side.

Petitioner's habeas corpus petition is a "substantial showing of a denial of his constitutional rights" and a clear violation of Edwards v Arizona, 451 US 477, 101 S.Ct. 1880, 68 L.ED.2d 378 (1981) which it is (impermissible for authorities "to reinterrogate an accused in custody if he has clearly asserted his right to counsel.").

Edwards was "designed to prevent police from bargering a defendant into waiving his previously asserted Miranda rights."

Edwards further stated that "if an accused is represented by counsel 'prior to' his arrest, police intiated interrogation is prohibited from further questioning without his attorney present during any questioning of any kind."

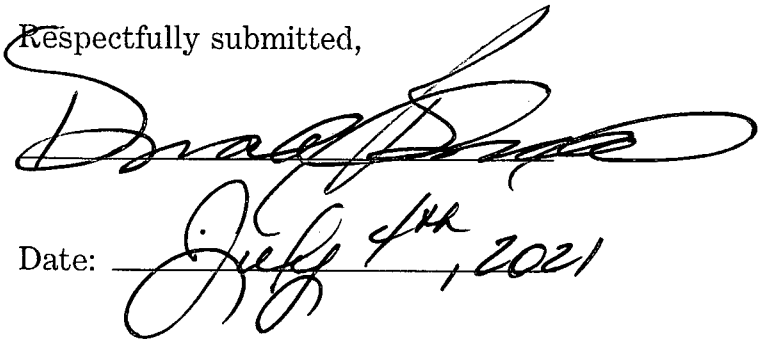
A COA is nothing more than a request for permission to seek review." Hohn v United States, 524 US 236, 256, 141 L.ED.2d, 118 S.Ct. 1969 (1998).

Presenting his writ before this Honorable Court for their threshold examination in the above decision; applying the same prinicples as in Miller-El where this Court concluded a COA should have issued. Mr. Boswell now asks if this Court would also be convinced that the District Court's decision was debatable, and if so, then he prays that he finds favor in the eyes of this Court to reverse the judgment of the Fifth Circuit, and remand his case for further proceedings consistant with its opinion along with any other relief this Court deems necessary to grant.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 4th, 2021