

21-5395

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

5th Cir. Justus

Supreme Court, U.S.
FILED

JUN 23 2021

OFFICE OF THE CLERK

Christopher Burgess — PETITIONER
(Your Name)

VS.

5th Cir. Appeals Court — RESPONDENT(S)

~~ON PETITION FOR A WRIT OF CERTIORARI TO~~
ON PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS TO
The United States District Court
Northern District of Texas Dallas Division

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

~~PETITION FOR WRIT OF CERTIORARI~~

PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

Christopher Burgess
(Your Name)

3060 FM 3514
(Address)

Beaumont, Texas 77705
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. In the interest of justice, should a 28 U.S.C. § 2255 be entertained under less stringent conditions if it contains both "actual innocence" and ineffective assistance of council" claims?

2. Why does the severity of a crime make it imposible to prove ones innocence?

3. Why is Meta Data not considered substantial evidence when innocence can be established based on the Meta Data due to the pattern it portrays?

4. Is a 28 U.S.C. § 2255 time barred when it was deposited in prison mail box within the one year time limit, but reseaved after the time limit due to the Mail Room's delay in requesting additional postage?

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

Burgess v. State, No. 50-17-00271-CR, 2018 WL 3322886, 1
(Tex.App. July 6 2018).....P:3
United States v. Burgess, 671 F.App'x 241, 241 (5th Cir. 2016)..P.3

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Baristreri v. Pasifica Police Dept 901 F.2d 696, 699 (9th Cir. 1988)	p.7
Davis v. Hill 798 F.3d. 290, 293-294 (5th Cir. 2015).....	p.7
Gordon v. Watson 622 F.2d. 120, 123 (5th Cir. 1980).....	p.7
Jackson v. Virginia ___ U.S. ___, 99S.Ct. 2781 (1979).....	p.5
Murray v. Carrier 477 U.S. 478, 106 S.Ct. 2639.....	p.6, 7, & 8
Spotville v. Cain 149 F.3d. 374, 377 (5th Cir. 1998).....	p.7
United States v. Agurs 427 U.S. 97, 96 S.Ct. 2395 (___).....	p.6
United States v. Johnson 327 U.S. 106, 112, 66S.Ct. 464((1946)...	p.6
United States v. Walker 772 F.2d. 1172, 1176 n.9 (5th Cir. 1985).	p.7
U.S. v. Adams 961 F.2d. 505, 508 (5th Cir. 1992).....	p.6
U.S. v. Armstrong 952 F.2d. 626, 629 (5th Cir. 1992).....	p.5
U.S. v. Carter 117 F.3d. 262, 269(5th Cir. 1997).....	p.5

STATUTES AND RULES

Fed.R.Crim.P.11(b)(3).....	p.6
18 U.S.C. §§2252A(a)(5)(B).....	p.4
28 U.S.C. §§ 2253(c)(2).....	p.4
28 U.S.C. §§ 2255.....	p.4

OTHER

5th Amendment (1791).....	p.7
6th Amendment (1791).....	p.7

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A 28 U.S.C. § 2255 of Petitioner

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES

~~PETITION FOR WRIT OF CERTIORARI~~
PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at United States v. Burgess 671 F.App'x 241(5th Cir. 2016); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☒ 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).

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution.....	P.7
Sixth Amendment of the United States Constitution.....	P.7
18 U.S.C. § 2252A(a)(5)(B).....	P.4
28 U.S.C. § 2253(c)(2).....	P.4
28 U.S.C. § 2255.....	P.4

STATEMENT OF THE CASE

Christopher Michael Burgess, Federal prisoner # 47713-177, pleaded guilty by plea bargain to possession of prepubescent child pornography 18 U.S.C. § 2252A(a)(5)(B) and was sentenced to 180 months in prison stacked on to state's sentence. United States v. Burgess, 671 F.App'x 241 (5th Cir. 2016). State's conviction of life without paroll for continuous sexual abuse of a minor. Cf. Burgess v. State, No. 05-17-00271-CR, 2018 WL 3322886, 1 (Tex.App. July 6, 2018).

Ms. Woods (acting attorney) insisted on Plea despite Mr. Burgess' reluctance due to his innocence and state charges. He attempted to withdraw Guilty Plea but it was deemed untimely. The complete Discovery was withheld. He proceeded through the varying steps to the 28 U.S.C. § 2255 Without seccess. The 28 U.S.C. § 2255 was deemed untimely, due to a 6 day delay caused by the unit mail room. The 28 U.S.C. § 2255 was never reviewed. The 28 U.S.C. § 2253(c)(2) was also denied due primarily to the Meta Data not being substantial evidence. The attempt to correct this was deemed untimely. No consideration was given to the "actual innocence" claim, or the "ineffective assistance" claim.

REASONS FOR GRANTING THE PETITION

In accordance to the judgement given, Meta Data is not considered substantial evidence. This denies Defendant the ability to prove "actual innocence" as the Meta Data shows automation that proves that he did not organize the child pornography he has been accused of possessing. The Meta Data contains three pieces of information that are critical in this case, and those like it, the creation data, the last modified data, and the last accessed data.

Fact one, if the creation data and the last modified data of a file are the same then the file has never been moved. This means that he could not have organized any of the illicit content as the plea bargain states, because the pictures' Meta Data are no doubt the same. Even if one file in the organization system he allegedly created was thus it would disprove the theory. This data was withheld from Mr. Burgess by not being included with the discovery. This by itself disproves the accuracy of the plea bargain. Fact two, Last accessed dates do not mean that the user accessed it at that point. In this case the last accessed dates indicate that Bittorent was accessing it due to the comparison of all the last accessed dates which shows a steady useage over about 36 hours. Also, this steady stream was maintained. Regardless of the length of the video. Thus the illicit data was not being viewed by a living person. There is no evidence of the first element that of ones knowledge.

Jackson v. Virginia ___ U.S. ___, 99 S.Ct. 2781 (1979)

6. Const. Law 266(7) U.S.C.A. Const. Amend. 14

Due process requires that no person be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offense.

[6] the constitutional standard recognizes in the Winship case was expressly phrased as one that protects an accused against a conviction except on "proof beyond a reasonable doubt....." In subsequent cases discussing the reasonable doubt standard, we have never departed from this definition of the rule or from the Winship understanding of the central purposes it serves.

U.S. v. Carter 117 F. 3d. 262, 269 (5th Cir. 1997)

[4-6] A court cannot accept a guilty plea unless there is a sufficient factual basis for the plea. U.S. v.

Armstrong, 951 F.2d. 626, 629 (5th Cir. 1992) the

Factual basis must appear in the record and must be sufficiently specific to be defined as criminal. U.S. v. Adams 961 F.2d 505, 508 (5th Cir. 1992); Armstrong 951 F.2d at 629 the District Court's acceptance of a guilty plea is a factual finding reviewable under the clearly erroneous standard. Id. Also Fed.R.Crim.P.11(b)(3) Murray v. Carrier 477 U.S. 478, 106 S.Ct. 2639 Actual innocent-Evidence Headnote [10] The more rational inference to draw from Congress's incorporation of a modified version of the miscarriage of justice exception in §§ 2244(b)(2)(B) and 2254(e)(2) is simply this: in a case not governed by those provisions, i.e., a first petition for federal habeas relief, the miscarriage of justice exception survived the AEDPA's passage intact and unresdricted.

Many Constitutional violations are stated in the 78 grounds of the 28 U.S.C. § 2255 at least 37 of which are "actual innocence" claims. As an examble of how things are done, this case shows a grose disregard for the constitution as a whole by this court.

How wide spred this disregard goes is anyones guess.

United States v. Argurs 427 U.S. 97, 96 S.Ct. 2395(____) 9. Although as attourney for the soverign must prosecute the accused with earnestness and vigor, he must always be faithful to his client's overriding intrest that "justice shall be done"; such attourney is the servant of the law, the two fold aim of which is that guilt shall not escape nor inocence suffer. Fed.R.Crim.P.11(b)(3); The factual basis requirement protects a defendant from pleading guilty without realizing that his or her conduct is not within the charge. Id Murray at 7. Habeas Corpus @= 45.3(1.50) In extraordinary case, where constitution violation has probably resulted in conviction of one who is actually innocent, Federal habeas court may grant writ even in t absence of showing of cause fortprocedural default.

The majority of constitutional violations are based on in ineffective assistanve of counsel. For instance ground #62 of the §§2255MssWoods(aactingattorney) convinced Movant that adespitet his innocence he could not prove it due to the severity on the crime". Thus the ples bargain is unreliable on its face, as stated:

Id Murray at 8. Criminal Law 641.13(1) Right to effective assistance of counsel may be violated by even isolated error of counsel if that error is sufficient] egregious and prejudicial United States vs Johnson 327 U.S. 106, 112, 66 S.Ct. 464 (!946); an ineffective ass assistance clame asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, os finality concerns are somewhat weaker and the appropriate standard of a proceeding itself unfair, even if the errors of counsel cannot be shown by a proo

preponderance of the evidence to have determined the outcome.

What these quotes imply is that §2255 and those like it should be entertained under less stringent conditions because it is far less prejudicial to Prosecution than other § 2255's, as Prosecution should not want innocence to suffer.

In this case all that is needed is for this §2255 to be viewed as countermanding the order which involved insufficient postage which was corrected promptly as to unit mail personnel excepted the missing 2 stamps. If not for this mistake his §2255 would have been fairly viewed, and due consideration would have hopefully been granted. Others have been time barred also due to such mistakes.

Gordon v. Watson 622 F.2d. 120, 123 (5th Cir. 1980)
Pro se litigants are not held to the same standards of compliance with formal or technical pleading rules applied to attorneys.; Spotville v. Cain 149 F.3d. 374, 337 (5th Cir. 1998) Traditional disposition of leniency toward Pro se litigants United States v. Walker 772 F.2d. 1172, 1176 n.9 (5th Cir. 1985) a clear error of judgment...upon a weighing of the relevant factors.
Davis v. Hill 798 F.3d. 290, 293-294 n.5 (5th Cir. 2015)
When a violation of this nature is committed by an unrepresented litigant who corrects the error promptly upon learning of it, as did Davis, there is an especially compelling case for the court to exercise its discretion to excuse the error. Id. Gordon at 123;
Balistreri v. Pasifica Police Dep't 901 F.2d. 696, 699 (9th Cir. 1988) ("this court recognizes that it has a duty to ensure that Pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements"). If his evidence is excluded absent strong countervailing factors, which we do not find here. Id. Murray at Limitations Period Headnote: [15] Focusing on the merits of a petitioner's actual-innocence claim and taking account of delay in that context, rather than treating ~~underlying~~ as a threshold inquiry, is turned to the rationale underlying the miscarriage of justice exception i.e., ensuring that federal constitutional errors do not result in the incarceration of innocent persons.

These same standards should be applied here. Without some remedy an innocent man will continue to suffer. How many others suffer from similar circumstances is anyone's guess. However, 45% of inmates in Texas are innocent according to the Innocence Initiative. One year is ample time for a few grounds however 78 grounds require

grounds requires far more research. Is the main reason for so many innocence suffering needlessly due to an overage of grounds?

It is also the opinion of Mr. Burgess acting Pro se that the severity should rightfully be placed at the sentencing phase not the guilt/innocent phase. Thus the videos and pictures themselves should be withheld from the guilt/innocent phase at least until after the knowledge element is satisfied due to the inflammatory nature of the crime itself. This will serve to prevent more innocent from being falsely convicted and fewer will break the law just to get a plea deal that by rights they should not have been forced into.

5th Amendment (1791) no persons...be deprived of life, liberty, or property, without due process of law...

6th Amendment (1791) In all criminal prosecutions...to have the assistance of counsel for his defence.

These quotes from the amendments are the sources for most of the constitutional violations he seeks relief from in his 28 U.S.C. § 2255. In truth Mr. Burgess is innocent of the crimes he has been charged with and seeks redress. He was "railroaded" by the courts and only seeks the justice he is guaranteed by the constitution of the United States of America.

~~Mr~~ Murray at Untimeliness-Actual Innocence-Evidence Hearing
Headnote:[16] Untimeliness, although not an unyielding ground for dismissing a petition, does bear on the credibility of evidence proffered to show actual innocence. The standard the United States Supreme Court adopted in Schlup v. Delo is demanding. The gateway should open only when a petition presents evidence of innocence so strong that the court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.

With 78 grounds all constitutional and 37 grounds actual innocence claims surely some of them are nonharmless.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

5th Cir. Justus
Christopher Burgess

v.

5th Cir. Appeals Court

Re: Christopher Burgess

To the Honorable Justus of the Fifth Cir. Supreme Court:

Comes now Petitioner/Pro se and respectfully asks the Honorable Court for In Forma Pauperis and an Extraordinary Writ. of Habeas Corpus. He would show a motion for leave to proceed In Forma Pauperis, and a petition for Extraordinary Writ of Habeas Courpus. Along with the following in support for such request:

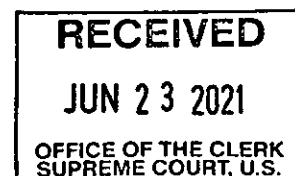
I

The Extraortinary Writhwill be in aid of the Court's appellate jurisdiction by supplyingga more balanced view of Pro se litigation. A Pro se litigant in prison has issuses with the U Unit Mail System espeshaly during Lock Down. Prisoners have no direct access to the Mail Room or Law Library thus PostageMmust be guessed. A Misjudgement in postagêeshould not be a reason to deny the very important 28 U.S.C. §22255 when correct postageewa was fixed in less than a minet, and mail neverrleft thier custidy. The intervening time should be on the Mail Room,,not the inmare.

Also withheld evidence should forstall time lîmits when said evidence can establish "actual innocence". Withheld evidence should act as new evidence when the evidence must show Defendant as innocent, Défendent has never seen it, yet due to his innocence knows what the evidence must show.

II

Thêr exeptional circumstance of "actual innocence" should qualify by itself, as it would help about 54% of prisoners in Texas alown. However other circumstances do aid this. In This § 2255 is described withheld evidence that establishes this claim. Everyone of the 78 grounds dipict violations to the Constitution.



Certificate of Delivery

I certify under penalty of perjury that on or about the 8th of June 2021 this motion and Writ, under Rule 20 will be "diposited into the prison mail system" and "that first-class postage will be prepaid" to the best of my knowledge and belief.

Signature,

Christopher Burgess
Christopher Burgess #2118350

CONCLUSION

WHEREFORE, Petitioner, respectfully prays that this Court grant his 28 U.S.C. § 2255 be given due consideration on the merits.

The petition for a writ of certiorari should be granted.
an Extraordinary writ of Habeas Corpus

Respectfully submitted,

Christopher Burgess
Christopher Burgess #2118350

Date: 8 June 2021

Verification

I have read the forgoing Motion, Writ, and Appendix and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Stiles Unit, Beaumont, Texas on 8 June 2021

Signature,

Christopher Burgess
Christopher Burgess #2118350