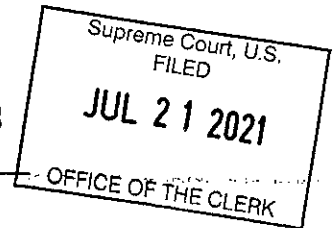


21-5440

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JOSEPH A. DIXON - PETITIONER

vs.

**MARK S. INCH, FLORIDA DEPT. OF CORRECTIONS, and
ATTORNEY GENERAL, STATE OF FLORIDA - RESPONDENT(S)**

ON PETITION FOR WRIT OF CERTIORARI
ON APPEAL FROM THE (11TH) ELEVENTH CIRCUIT
COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

**JOSEPH A DIXON, DC#120123
MARION CORRECTIONAL INSTITUTION
P.O. BOX 158
LOWELL, FLORIDA, 32663 - 0158**

QUESTION #1 PRESENTED

“Whether the Federal Reviewing Courts abused their discretion in denying Petitioner’s F.R.C.P. 60(b) when Petitioner’s assertion of being on high doses of medication; and the death of his mother were valid grounds to override Petitioner’s untimely filing of his § 2254 Federal Habeas Corpus, thereby allowing Petitioner’s amended version should be heard on the merits in this proceeding pursuant to established federal laws?

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:

Aulisio, Julius	Dixon's Direct Appeal Counsel
Barber, Thomas	United States District Judge
Bettker, Amanda	Assistant State Attorney
Bulone, Joseph	State Circuit Court Judge
Dixon, Joseph	Petitioner
Federico, Phillip	State Circuit Court Judge
Horbelt, Sonya Roebuck	Assistant Attorney General
Inch, Mark S.	Secretary, Florida Department of Corrections
Kelly, Patricia	Judge, Florida Second District Court of Appeal
LaRose, Edward	Judge, Florida Second District Court of Appeal
Lucas, Matthew	Judge, Florida Second District Court of Appeal
Migliore, Frank	Assistant State Attorney
Moody, Ashley	Attorney General, State of Florida

O'Leary, Donald

Silberman, Morris

Dixon's Trial Counsel

Judge, Florida Second District Court of
Appeal

TABLE OF CONTENTS

Question #1 Presented	i
List Of Parties	vii
Index To Appendices	ix
Table Of Authorities.....	x
Opinions Below	1
Jurisdiction	1
Constitutional And Statutory Provisions Involved.....	3
Statement Of Facts And Circumstances	7
Procedural History	8
Conclusion	12
Oath	12

INDEX TO APPENDICES

Denial Order of the (11th) Eleventh
Circuit Court of Appeals; dated
February 19, 2021 and Denial Order
of the (11th) Eleventh Circuit Court of
Appeals; dated April 5, 2021;

“A”

Denial Order of the United District
Court of Tampa Florida Division,
dated October 20, 2020

“B”

TABLE OF AUTHORITIES

FLORIDA DISTRICT COURT OF APPEALS

<i>Cummingham v. State</i> , 799 So. 2d 442 (Fla. 4th DCA 2001)	14
---	----

UNITED STATES SUPREME COURT

<i>Abbott Laboratories v. Gardner</i> , 87 S. Ct. 1507, N. [5-9] (1967)	10, 15
<i>Christianson v. Colt Industries Operating Corp.</i> , 486 U.S. 800 - 815, 108 S. Ct. 2166 (1998)	10
<i>Klapproun v. U.S.</i> , 69 S. Ct. 384 (1949)	10, 15
<i>McQuiggen v. Perkins</i> , 133 S. Ct. 1926 (2013)	15
<i>Payton v. New York</i> , 100 S. Ct. 1371 (1980)	13
<i>Strickland v. Washington</i> , 104 S. Ct. 2052 (1984)	15

FEDERAL COURT OF APPEALS

<i>Amrine v. Bowersox</i> , 238 F.3d 1023, 1028 (8th Cir. 2001)	8
<i>Clark v. U.S.</i> , 764 F.3d 653, 658 (6th Cir. 2014)	11, 13
<i>Cleveland v. Bradshaw</i> , 693 F.3d 626, 633 (6th Cir. 2012)	9
<i>Dewman v. Shubow</i> , 413 F.2d 258 (1st Cir. 1969)	14
<i>Edmonds v. Smith</i> , 922 F.3d 737 (6th Cir. 2019)	15
<i>Fratta v. Davis</i> , 889 F.3d 225, 232 (5th Cir. 2018)	9
<i>Gomez v. Jaimet</i> , 350 F.3d 673, 679-680 (7th Cir. 2003)	9
<i>Griffin v. Johnson</i> , 350 F.3d 956, 963 (9th Cir. 2003)	9
<i>Gunn v. Newsome</i> , 881 F.2d 949, 955 (11th Cir. 1989) cert. denied 110 S. Ct. 542 (1989)	14

<i>Huynh v. King</i> , 95 F.3d 1052 (11th Cir. 1996)	14
<i>In Re Jermaine Stevenson</i> , 889 F.3d 308 (6th Cir. 2018)	7, 11, 13
<i>Jones v. U.S.</i> , 224 F.3d 1251, 1255-1256 (FN8) (11th Cir. 2000)	10, 14
<i>L.P. Steuart Inc. v. Matthews</i> , 329 F.2d 234, 235, 236 (D.C. Cir. 1964) cert. denied 85 S. Ct. 50 (1964)	7, 14
<i>Lal v. California</i> , 610 F.3d 518, 524 (9th Cir. 2010)	15
<i>Lemoge vs. U.S.</i> , 587 F.3d 1138, 1197-1198 (9th Cir. 2009)	7, 14
<i>Nara v. Frank</i> , 488 F.3d 187, 193-194 (3d Cir. 2007) cert. denied 128 S. Ct. 1896 (2008)	14
<i>Reeves v. Fayette SCI</i> , 897 F.3d 154, 160-165 (3d Cir. 2018)	8, 14
<i>Riva v. Ficco</i> , 803 F.3d 77, 84 (1st Cir. 2015)	9
<i>Riva v. Fisher</i> , 687 F.3d 514, 543, 546-547 (2d Cir. 2012)	9
<i>Rozzelle v. Sec'y Fla. Dept. of Corr.</i> , 672 F.3d 1000, 1018 N. 21 (11th Cir. 2012)	9
<i>U.S. v Matos</i> , 905 F.2d 30 (2d Cir. 1990)	12
<i>U.S. v. Struckman</i> , 603 F.3d 731, 736, 739 (9th Cir. 2010)	8
<i>U.S. v. Wilson</i> , 614 F.3d 219, 233 (6th Cir. 2010)	14
<i>Valerio v. Crawford</i> , 306 F.3d 742, 763-764 (9th Cir. 2001) cert. denied 123 S. Ct. 1788 (2003)	10
 UNITED STATES CODE	
§ 2254	i, 12, 14

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 "A" 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 United States District Court appears at Appendix "B" to the petition dated October 20th, 2021 and is:

☐ reported at _____ ; or,

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

☒ is unpublished

☐ For cases from state courts:

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 19, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing "en banc" was denied by the United States Court of Appeals on the following date: April 5, 2021 and a copy of the order denying rehearing appears at Appendix "A".

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1)(A). Pursuant to *L.P. Steuart Inc. vs. Matthews*, 329 F.2d 234, 235, 236 (DC. Cir. 1964) cert. denied 85 S. Ct. 50 (1964) (“Affirming granting relief under Rule 60(b)(6) from dismissal for lack of prosecution where attorney experienced family problems”) pro – se Petitioner experienced family problems, see also, *Lemoge vs. U.S.*, 587 F.3d 1138, 1197-1198 (9th Cir. 2009) (“Finding the medical problems were valid reason for delay in context of Rule 60(b)(1); see again, *L.P. Steuart Inc. vs. Matthews*, 329 F.2d 234, 235, 236 (DC. Cir. 1964) cert. denied 85 S. Ct. 50 (1964) (“Beset with personal problems including illness of wife”) cert denied 85. S. Ct. 50 (1964) when Petitioner experienced death of mother Josephine Dixon on May 13th, 2015, which altered Petitioner’s mental capacity causing Petitioner seek medical help being administered medication, [Losartan 50 mg, Atorvastaint 40 mg, and Metoprolotart 50 mg] to combat the psychological breakdown he was experiencing and the mental episodes which lulled him into inaction; a viable defense for this court to equitable toll this ground on “actual innocence exception” to have Petitioner grounds heard on it merits, when Petitioner has demonstrated to this court that this court has Article III jurisdiction.

Any reasonable jurists of this court would agree that Petitioner has litigated a good ground of a U.S. Constitutional violation that competent courts would resolve the procedural handling, the procedural bars, and merits differently pursuant to the laws and timely amendments of his § 2254, see *In Re Jermaine Stevenson*, 889 F.3d 308 (6th Cir. 2018) demonstrating the “actual innocence” to override any and all procedural defaults to have the merits heard on Trial Counsel David O’Leary’s ineffectiveness to file a

"motion to suppress" drugs illegally seized by police when police violated Petitioner's 4th and 14th Amendment rights when police stood on a chair peering over Petitioner's stockade "privacy" fence into his rear yard to see what Petitioner was doing, causing Petitioner to run, drop cocaine inside of Cheetos© bag. The expectation of privacy afforded the Petitioner [in his backyard] was violated by police, see, *U.S. v. Struckman*, 603 F.3d 731, 736, 739 (9th Cir. 2010), of the U.S. Constitutional Amendments of the 4th and 14th, is a pure legal question that needs judicial intervention by this Court.

In addition to the above, and below pleading demonstrations, the (11th) Eleventh Circuit Court of Appeals has clearly and evidently created a blockade that makes a conflict between sister circuit court of appeals of Petitioner showing "**its is more likely than not no reasonable minded jurists or juror would not have voted to convict Petitioner beyond a reasonable doubt for possession of (4) four bags of [crack] cocaine and sentenced to prison for years**") overrides the U.S. District Court Thomas P. Barber, and the (11th) Eleventh Circuit Court of Appeals unreasonable denials that reflect that Petitioner's amendment was untimely is erroneous, see, **Appendix A, B**, see, *Reeves v. Fayette SCI*, 897 F.3d 154, 160-165 (3d Cir. 2018) ("The Court of Appeals for the Eighth Circuit - the first to address the issue - held that evidence is new only if it was not available at trial and could have not been discovered earlier through the exercise of due diligence, *Amrine v. Bowersox*, 238 F.3d 1023, 1028 (8th Cir. 2001). Thereafter, the Court of Appeals for the Seventh and Ninth Circuits concluded otherwise: petitioners can satisfy the "actual innocence standards" new evidence requirement of offering "newly requirement of offering "newly presented" exculpatory evidence meaning evidence not

presented to the jury at trial see, *Gomez v. Jaimet*, 350 F.3d 673, 679-680 (7th Cir. 2003); *Griffin v. Johnson*, 350 F.3d 956, 963 (9th Cir. 2003) more recently, the courts of appeals for the First, Second, and Sixth circuits have similarly suggested that actual innocence can be shown by relying on newly presented – just newly discovered – but evidence of innocence, see, *Riva v. Ficco*, 803 F.3d 77, 84 (1st Cir. 2015); *Cleveland v. Bradshaw*, 693 F.3d 626, 633 (6th Cir. 2012); *Riva v. Fisher*, 687 F.3d 514, 543, 546-547 (2d Cir. 2012).

The Court of Appeals for the Fifth Circuit has acknowledged but not weighed in on the [circuit split], *Fratta v. Davis*, 889 F.3d 225, 232 (5th Cir. 2018); see also, *Rozzelle v. Sec’y Fla. Dept. of Corr.*, 672 F.3d 1000, 1018 N. 21 (11th Cir. 2012) (“Refraining from reaching issue of whether petitioner’s evidence that was available at trial but was not presented should be considered new for purposes of *Schlup*”) shows reviewing federal courts should have granted Petitioner’s F.R.C.P. 60(b) in favor of Petitioner, by equitable tolling all grounds to relate back to Petitioner’s timely filed § 2254 because the federal question presented is debatable and this court can not be confident that these clear and plain U.S. Constitutional violations are foreclosed by statute, rule or authoritative court decisions which is lacking in any factual basis in the record of any federal court reaching the merits or whether Petitioner demonstrate thru pleading the actual innocence exception to overcome the procedural bars to have reviewing court to order an evidentiary hearing is capricious and arbitrarily executed in a bias and discriminatorily affects all state and federal prisoners who can go thru the gateway, but are denied by the (11th) Eleventh Circuit Court of Appeals without valid reasons as

evidenced by Petitioner's pleading that this Court's judicial intervention is required pursuant to "fundamental fairness," and in the "interest – of – justice" see, ***Abbott Laboratories v. Gardner***, 87 S. Ct. 1507, N. [5-9] (1967); ***Christianson v. Colt Industries Operating Corp.***, 486 U.S. 800 - 815, 108 S. Ct. 2166 (1998); ***Jones v. U.S.***, 224 F.3d 1251, 1255-1256 (FN8) (11th Cir. 2000); ***Valerio v. Crawford***, 306 F.3d 742, 763-764 (9th Cir. 2001) cert. denied 123 S. Ct. 1788 (2003); ***Klapprout v. U.S.***, 69 S. Ct. 384 (1949) requires this court to address the "actual innocence exception" and remove the conflict among all the court of appeals (1 thru 11) that's a liberty interest that prevents Petitioner from free unreasonable searches and seizures which would benefit every U.S. citizen with an expectation of privacy from government intrusion into their activities while in the privacy of their curtilage shows that this "Writ of Certiorari" should be granted due to providing guidance to the American people and courts how to gauge the "gateway" of innocence standard of being of great public importance?

STATEMENT OF FACTS AND CIRCUMSTANCES

Petitioner Joseph A. Dixon was arrested by Clearwater Police when Officer Corporal Horning conducted illegal from a neighboring yard to the north, where he looped around through the brush, stood up on a chair and peered over Petitioner's six – foot stockade fence, later testifying that from behind the fence he saw the Petitioner in the "shadows" and people coming and going from the property engaging in what he believed to be drug deals. The record further reflects that Sergeant McCauley and Officer Shen both testified that they witness the Petitioner jumping over the fence onto a public sidewalk and Petitioner discarding a Cheetos bag that contained four (4) plastic bags of cocaine and crack cocaine.

PROCEDURAL HISTORY

(1). Petitioner had a direct appeal that was denied. See, *Dixon v. State*, 98 So. 3d 576 (Fla. 2d DCA 2012).

(2). Petitioner filed a timely post-conviction 3.850, case number 2D15-0883, Denied February 20th, 2015.

(3). Petitioner filed a timely defective § 2254, but amended it to demonstrate the actual innocence gateway, see, *In Re Jermaine Stevenson*, 889 F.3d 308 (6th Cir. 2018) (“citing *Clark v. U.S.*, 764 F.3d 653, 658 (6th Cir. 2014).

Reasons for Granting the Petition

QUESTION #1

“Whether the Federal Reviewing Courts abused their discretion in denying Petitioner’s F.R.C.P. 60(b) when Petitioner’s assertion of being on high doses of medication; and the death of his mother were valid grounds to override Petitioner’s untimely filing of his § 2254 Federal Habeas Corpus, thereby allowing Petitioner’s amended version should be heard on the merits in this proceeding pursuant to established federal laws?

(1). Petitioner sustained undue prejudice when federal reviewing courts abused their discretion by refusing to grant Petitioner “Certificate of Appealability,” when Petitioner’s totality – of – circumstances, and legal pleadings demonstrated the “actual innocence exception” to have the merits hears of Florida’s Clearwater Police conducting “illegal” surveillance into Petitioner’s yard by peering over Petitioner’s stockade fence into his curtilage where he is expected to a right of privacy, a guarantee by the U.S. Constitution. Corporal Horning testified that from behind the fence (a six – foot stockade fence) he saw Petitioner in the shadows and people coming and going from the property engaging in what he believed to be drug deals. The record further reflects that Sergeant McCauley and Officer Shen both testified that they witnessed the Petitioner jumping over the fence onto a public sidewalk, where Petitioner discarded a Cheeto’s bag that contained cocaine and crack cocaine, see, *U.S. v Matos*, 905 F.2d 30 (2d Cir. 1990) (“Counsel’s apparent willingness to accept the government’s version of the facts concerning defendants

arrest and search of his apartment at least called into question the adequacy of his representation with respect to failure to move to suppress”), made Trial Counsel Donald O’Leary ineffective assistance of counsel for his failure to file a motion to suppress with supporting legal authorities, see, *U.S. v. Struckman*, 603 F.3d 731, 736 (9th Cir. 2010) (“Officers entered a fence in backyard of a home enclosed by a (6) six foot tall fence, but officers had to climb atop objects and peek through small holes in the fence to see what was happening in the backyard of the residence *Id.* 739 subjective expectation of privacy in yard adjacent to defendant’s house because enclosed and clearly designated as area where home life activities took place, citing *Payton v. New York*, 100 S. Ct. 1371 (1980) occurred on August 5th 2007.

Petitioner had his § 2254 pending in the U.S. District Court,, and when finding that petition was defective, Petitioner amended the petition pursuant to, see, *In Re Jermaine Stevenson*, 889 F.3d 308 (6th Cir. 2018) (“citing *Clark v. U.S.*, 764 F.3d 653, 658 (6th Cir. 2014) and when Petitioner demonstrated the “actual innocence exception gateway” allows both U.S. District Court and the (11th) Eleventh Circuit Court of Appeals, the authority to overrule any lateness or procedural defaults when **“its is more likely than not that no reasonable minded jurists or juror would not have voted to convict Petitioner but would have acquitted Petitioner of possession of (4) four bags of [crack] cocaine** requires discharge of Petitioner, is a “legal question” this Court must answer pursuant to the “great public importance” of all U.S. Americans and federal courts, having guidance, in weighing the factors, to resolve the merits of Petitioner’s U.S. Constitutional violations of the 4th and 14th Amendments violations warrants Petitioner’s

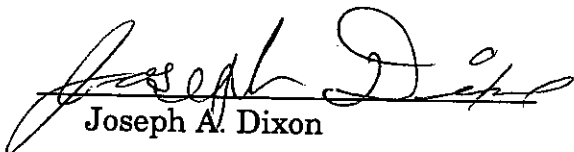
“Certificate of Appealability” to be granted with a federal evidentiary hearing, see, ***Reeves v. Fayette SCI***, 897 F.3d 154, 160-165 (3d Cir. 2018) when said excuses provide to the courts that Petitioner was on medication that cause Petitioner to be disable and not timely amend his § 2254 required federal reviewing courts to grant Petitioner’s F.R.C.P. 60(b) motion when the evidence of Losartan 50 mg, Atorvastaint 40 mg, and Metoprololart 50 mg made Petitioner have psychological/mental disorders, see, ***Lemoge v. U.S.***, 587 F.2d 1138, 1197-1198 (9th Cir. 2009); ***Dewman v. Shubow***, 413 F.2d 258 (1st Cir. 1969); and when Petitioner’s mother Josephine Dixon died on May 13, 2015) see, ***L.P. Steuart Inc. v. Matthews***, 329 F.2d 234, 235, 236 (D.C. Cir. 1964) cert. denied 85 S. Ct. 50 (1964) justifies this Court to grant this instant “COA” by all Justices when jurists could debate and say that “equitable tolling” should have been granted to Petitioner due to the totality of circumstances and numerous violations of clearly established laws proves many questions are debatable and this court can not be confident that these clear and plain U.S. Constitutional violations are foreclosed by statue, rule, or authoritative court decisions, which the record is lacking of any federal court reaching in unreasonable detention of Petitioner, see, ***Nara v. Frank***, 488 F.3d 187, 193-194 (3d Cir. 2007) cert. denied 128 S. Ct. 1896 (2008); ***Gunn v. Newsome***, 881 F.2d 949, 955 (11th Cir. 1989) cert. denied 110 S. Ct. 542 (1989); ***U.S. v. Wilson***, 614 F.3d 219, 233 (6th Cir. 2010); ***Huynh v. King***, 95 F.3d 1052 (11th Cir. 1996) (“IAC, failure to timely file suppression motion”); ***Cummingham v. State***, 799 So. 2d 442 (Fla. 4th DCA 2001) ***Jones v. U.S.***, 224 F.3d 1251, 1255-1256 (FN8) (11th Cir. 2000); ***McQuiggen v. Perkins***, 133 S. Ct. 1926 (2013); ***Edmonds v. Smith***, 922 F.3d 737 (6th Cir. 2019); ***Lal v. California***, 610

F.3d 518, 524 (9th Cir. 2010); *Abbott Laboratories v. Gardner*, 87 S. Ct. 1507, N. [5-9] (1967); *Klapprout v. U.S.*, 69 S. Ct. 384 (1949), shows this Court has Article III jurisdiction to hear this, "Writ of Certiorari"?

CONCLUSION

- (1). Grant Petitioner's "COA" that would deem Trial Counsel Donald O'Leary as being ineffective for his failure to file a motion to suppress, see, *U.S. v. Struckman*, 603 F.3d 731, 736 (9th Cir. 2010); *Strickland v. Washington*, 104 S. Ct. 2052 (1984), and discharge Petitioner?
- (2). Order a federal evidentiary hearing;

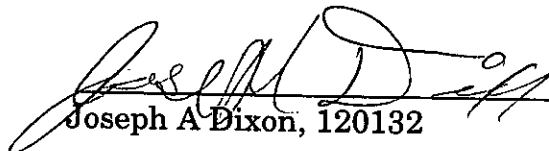
Respectfully submitted,


Joseph A. Dixon

Date: August 12, 2021

OATH

UNDER THE PENALTIES OF PERJURY, I do swear that the facts' and circumstances' are true and correct, see, *Kafo vs. U.S.*, 467 F.3d 1063, 1068 (7th Cir. 2006) executed on August 12, 2021.


Joseph A Dixon, 120132