

No. \_\_\_\_\_

**21-5500**

IN THE  
SUPREME COURT OF THE UNITED STATES

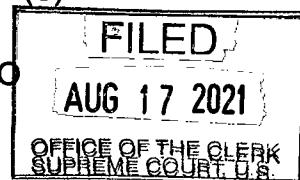
Pro Se John Richard Smith — PETITIONER  
(Your Name)

vs.

**ORIGINAL**

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



United States Court of Appeals for the Fifth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Richard Smith

(Your Name)

C.T.Terrell Unit - 1300 FM 655

(Address)

Rosharon, TX 77583

(City, State, Zip Code)

N/A

(Phone Number)

## QUESTION(S) PRESENTED

Whether the 5th Circuit Court of Appeal errored in denying petitioner's request for a (C.O.A.) claiming Petitioner failed to state a Constitutional violation?

Where Petitioner claimed he has been prejudiced by counsel's failure to investigate accused only viable defense available and failure to call available eye witness, which violated his Sixth Ammendment right which is protected under the United States Constitution.

Whether the 5th Circuit of Appeals errored in denying Petitioner's request for a (C.O.A.) claiming Petitioner failed to State a Constitutional violation?

Where Petitioner claimed he was denied Due Process by the Prosecution withholding of Exculpatory Evidence which violated his Fifth and Fourteenth Ammendment rights which is protected under the Constitution of the United States.

## **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**

- Smith v State of Texas No. 1395401 District Court Judgement entered on December 3rd, 2015.
- Smith v State of Texas No. 01-15-01055-CR The Court of Appeal Judgement entered on March 3rd, 2017.
- Smith v Davis No. WR-88110 Court of Criminal Appeals Judgement entered on August 22nd, 2018.
- Smith v Davis No. H-18-3578 In the United States District Court. Judgement entered on September 24th, 2019.
- Smith v Lumpkin No. 4:18-CV-3578 The United States Court of Appeals Judgement entered on December 14th, 2020.
- Smith v Lumpkin No. 4:18-CV-3578 United States Court of Appeals Judgement entered on March 22nd, 2021.

## 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.....	6

## INDEX TO APPENDICES

**APPENDIX A** - Decision of the United States Court of Appeal Fifth Circuit

**APPENDIX B** - Decision of the United States District Court

**APPENDIX C** - Order of the United States Court of Appeals Denying Rehearing

**APPENDIX D** - Affidavit from Trial Counsel on remand

**APPENDIX E** - Trial Record of Counsel's closing argument

**APPENDIX F** - Trial Record Testimony of Dr. Sara Doyla

**APPENDIX G** - Statement of the Case (Continued)

**APPENDIX H** - Reasons for Granting Petition (Continued)

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
AVILA V QUARTERMAN - 499 F.Supp 713, 560 F3d 299	5
BRADY V MARYLAND - 373 US 83, 83 S.Ct. 1194	3
Moore V Johnson - 194 F3d 586	5
Mowbray - 943 SW2d 466, 117 S.CT. 2513	5
STRICKLAND V WASHINGTON - 104 S.CT 2052	3
BANKS V DRETKE - 540 US at 690, 124 S.CT. 1272	3

## STATUTES AND RULES

5th & 14th Amendment Due Process

6th Amendment Compulsory Process & Effective Assistance of Counsel

## OTHER

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 \_\_\_\_\_; 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 \_\_\_\_\_; 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 Dec. 14, 2020.

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: 3-22-2021, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including 6-19-2021 (date) on 8-18-2021 (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**

Sixth Ammendment:

STRICKLAND V. WASHINGTON-104S.CT 2052

The Court agreed that the Sixth Ammendment imposes on counsel a duty to investigate because reasonable effective assistance must be based on professional decision and informed legal choices can be made only after investigation of options. Counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produce a just result.

Fifth Ammendment:

Banks V. Dretke- 540 US at 690, 124 S.CT. 1272

The Supreme Court has consistently held that prosecution's duty to disclose evidence material to either guilt or punishment applies even when there has been no request by the accused.

Fourteenth Ammendment:

BRADY V. MARYLAND- 373 US 83, 83 S.CT. 1194

Suppression by prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution.

## STATEMENT OF THE CASE

On July 21, 2013 the Petitioner was charged with murder of C. Cousin. Petitioner was appointed counsel, Petitioner explained to Counsel that he did not murder Cousin, but Cousin's death was an accident, that he had given Cousin a gun but when he noticed that Cousin was high on P.C.P. Petitioner tried to get gun back. Petitioner and Cousin wrestled over the gun and it went off killing Cousin. Petitioner's trial began in Dec. 2015, Petitioner felt that appointed counsel was not trying to show he was innocent. So Petitioner filed a Pro Se motion for discovery in an attempt to gain exculpatory evidence. That being that Cousin had gun shot residue on the right hand and that Cousin's fingerprints were on the gun. At Petitioner's trial, Petitioner took the standtestified that Cousin pulled the trigger as they wrestled for the gun. In counsel's closing arguments to the jury he stated that he or the jury known the result of the residue kit performed on Cousin's hands and the results of the fingerprints taken from the gun. This would have proven if my client was telling the truth or not, because my client testified that he did not kill Cousin. Dr. Sara Doyla testified that she had done a residue kit on Cousin's hands and sent the results to the prosecutor's office for anyone investigating the case. While Dr. Williams testified about the residue kit done on Petitioner's hands (The results were: No particles confirmed as having a composition characteristic with the GSR residue were detected on Petitioner's right hand or left - Volume 4 Page 36 (17-23) of the record). On Dec. 3, 2015 the jury found Petitioner guilty and on Dec. 4, 2015 the judge sentenced the Petitioner to 58 years. On Sep. 24, 2019, In The United States District Court, Petitioner's 11.07 was denied. The United States Court of Appeals remanded the case back to the District Court to

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é:g: APPENDIX G

## REASONS FOR GRANTING THE PETITION

The Court of Appeals has ruled contrary to the standard set forth in *Brady v Maryland*, and in *Strickland v Washington*, in that the Petitioner has shown that the deficient performance by appointed counsel, prejudiced his defense. Where counsel failed to investigate exculpatory evidence that would have shown that the victim in fact was the one who pulled the trigger. Dr. Sara Doyla testified that she sent the results of the residue kit done on Cousin's hand to the prosecutor for anyone investigating the case. Counsel failed to investigate the accused's only viable defense available. In *Mowbray* 117 S.Ct. 2513 the Court ruled, Counsel for ~~former~~ defendant was ineffective, for failing to produce expert medical testimony that physical evidence was consistent with victim committing suicide, or to interview prosecution medical witness. Petitioner has also shown that the withholding of Exculpatory Evidence by the prosecutor violated his right to Due Process. Like in *Avila v Quarterman* 499 F.Supp. 713, 560 F3D 299. Petitioner has shown that he was denied his constitutional right under Supreme Court's holding in *Brady v Maryland* 373 US 83, 83 S.Ct. 1194 when the prosecutor withheld from defense counsel the personal knowledge and expert opinions of prosecution expert Dr. Harry Wilson which could have been used to impeach the prosecution also like in *Avila v Quaterman* the Petitioner should be entitled relief where the State Habeas Court employed the wrong legal standard to review and evaluate Petitioner's *Brady* claim. Second, the State Habeas Court factual findings are not only rebutted by the clear and convincing evidence currently before this Court but those findings had no evidentiary basis whatsoever in the record before the

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Richard Smith

Date: 8-9-2021