No. ______________

21-6033

IN THE

SUPREME COURT OF THE UNITED STATES

LARRY GENE FRANCIS — PETITIONER
(Your Name)

vs.

Bobby Lumpkin - Dir. TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals - New Orleans, LA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LARRY GENE FRANCIS
(Your Name)

2101 FM 369 N
(Address)

Iowa Park, TX 76367
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) Was petitioner subjected to Double Jeopardy when he was found "guilty" of violating conditions he had earlier been found "not guilty" of violating in an administrative parole violation hearing?

2) Is it a violation of Due Process of Law when the "preponderance of evidence" in the administrative parole violation hearing consists of false testimony as to all material facts?

3) Is it a violation of First Amendment protections when the reason "charges" were brought was because petitioner complained to supervisors about his parole officer's handling of his parole?

4) Is it a violation of Due Process of Law when parole is denied for reasons that are false and/or have no basis in law or fact?

5) Is it a violation of Due Process of Law when there is no evidence to prove violation of parole or that a violation occurred?

6) Is it a Sixth Amendment violation when there is insufficient notice of the charges petitioner has to defend against?

7) Is it a Constitutional violation to deny exculpatory evidence?

8) Is it Constitutional to enact laws that serve to deprive a party of exculpatory evidence?

9) Was Petitioner denied his right to Equal Protection of the Laws and his First Amendment right of Access to the Courts when he was denied evidence of innocence by State Laws that allowed denial because Petitioner was in prison unless he had an "outside agent or representative" to represent him?

QUESTIONS PRESENTED

10) Was Petitioner denied meaningful Constitutional Access to the Courts when the 5th Circuit denied C.O.A. when proof of false testimony, Double Jeopardy and no evidence were shown with prima facie evidence and proof of State Respondent's impeding right to exculpatory evidence as well as impeding right to Assistance of counsel?

11) Are State laws Constitutional when they allow denial of evidence exculpatory in nature?

12) Do Texas Gov't Codes 552.028(a)(1) and 552.103 conflict with the duty imposed by Brady v Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) when they allow the State to withhold evidence that is exculpatory, denying Petitioner meaningful Access to courts to petition for Redress of grievances?

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:

Tx Board of Pardons and Paroles - David Gutierrez - Chairman
8610 Shoal Creek Blvd.
Austin, Tx 78711

Texas Dept of Crim. Justice Parole Division - Pamela Thielke - Dir.
P.O. Box 13041
Austin, Texas 78711

RELATED CASES

- Ex parte Larry Gene Francis, No. WR-20,785-08, Texas Court of Criminal Appeals, Judgement entered June 19, 2019

- Francis v. Davis, No. 19-cv-1979, U.S. District Court for the Northern District of Texas-Dallas, Judgement entered May 08, 2020

- Francis v Lumpkin, No. 20-10534, U.S. Court of Appeals for the Fifth Circuit, Judgement entered May 04, 2021

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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 C 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 May 04, 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: July 16, 2021, and a copy of the order denying rehearing appears at Appendix C. see "Reasons"

[ ] 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

This case involves the following U.S. Constitutional Amendments:

1st Amendment - Freedom of Expression: ... Speech, Press, Assembly, Petition.
Congress shall make no law respecting an establishment of religion, or prohibition the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

5th Amendment, Criminal Proceedings; Due Process; Eminent Domain.
No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6th Amendment, Criminal Proceedings.
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

14th Amendment, Rights to citizens:
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.

STATEMENT OF THE CASE

This case stems from a parole violation hearing where Petitioner was alleged to "fail to submit to electronic monitoring program". He was found "Not Guilty", charges rewritten and then found "Guilty".

During the hearing two (2) parole officers testified falsely. P.O. Davis testified Petitioner's faulty em device was changed; it was not; and P.O. Nixon stated a "fake alert" he witnessed was caused by Petitioner stepping past his residence door which implied object based operation, and that the em system "showed" Petitioner was away from his residence when both were false as the em was distance based and couldn't be set on objects.

Motion to ReOpen Hearing was filed and denied. Habeas 11.07 petition filed and Denied despite State's Attorneys admission of no knowledge of revocation circumstances. Federal §2254 filed alleging False Testimony, Double Jeopardy, No Evidence, etc, and Discovery, Evidentiary Hearing + Appointment of Counsel requested based on State's Response to 11.07 And Respondent Parole Board's refusal to allow Petitioner, in writing, evidence that proved false testimony and was exculpatory, and numerous Requests for such were Denied. District Court denied Relief despite writing out the false testimony in FINDINGS. Certificate for Appealability was filed in 5th Circuit using FINDINGS, letters from State actors refusing Request for Exculpatory evidence in their possession. Discovery and Appointment of Counsel requested on basis of FINDINGS, letters denying Records, as well as Emails from State Parole Officials refusing pro bono counsel from assisting Petitioner unless he performed acts he was not required to do, and would've constituted false documents. C.O.A. was Denied, all Requests denied, May 04, 2021. Despite Petitioner filing Request for Rehearing/Rehearing En Banc 6 days after receiving Denial the Request was denied filing because the 5th Circuit Clerk mailed it to an address they knew Petitioner was no longer at because they acknowledged new address after March, 2021, well before May 04, 2021. Petitioner's Denial was received May 31, 2021 after forwarding and Rehearing filed for June 06, 2021, and designated "out-of time" despite Court having envelope proving mismailing on part of the Clerk. Court denied timely filed Rehearing Request on July 16, 2021.

Petitioner filed to Recall Mandate. which Petitioner did not receive until June 07, 2021, the day AFTER he mailed his Rehearing Request, and, to this date, has heard no further word from Clerk or Court below.

Petitioner files this Petition for Writ of Certiorari asking this Court to exercise their powers to grant Certiorari and correct a manifest miscarriage of justice in that Petitioner is factually innocent of violation and, in fact, no violation ever occurred and the State refuses to allow documents/records requests because Petitioner proved it to them already.

Reasons For Granting The Petition

This case presents several fundamental questions involving this Court's holdings in Morrissey v Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1971) and to what extent the minimal Due Process safeguards are applied to parole violation hearings, as well as interpretation of the Double Jeopardy Clause and the extent a State may go to deny exculpatory evidence or impede the right to file for redress or obtain counsel. Also in question is whether review should be denied when a timely filing is deemed late due to a Clerk's error, as well as whether a decision can be deemed "just" when the District Court's FINDINGS present an issue of doubt where several instances of false testimony are presented therein, and how a decision can be considered "informed" when the State Attorney's Response to 11.07 stated the need for Discovery but was never done; as well as whether "some evidence" standard's apply to alleged "elements" of a violation each or any "one" element to satisfy the "preponderence of evidence".

Double Jeopardy

It is well settled that Double Jeopardy does not apply to REVOCATIONS, but Petitioner's Argument is that he was found "NOT GUILTY" of violations, (App. D) After a hearing & evidence considered. The violations were rewritten to say the same thing and petitioner then found "Guilty" of those same violations he had just been found Not to have violated in an administrative hearing. App. D makes it clear there was a Finding made, then an Amendment.

This Court held in Breed v Jones, 95 S.Ct. 1776, that "when an administrative agency acts in a judicial capacity + resolves ... issues properly before it, the Courts have not hesitated to apply res judicata to force repose,' U.S. v Utah Const. + Mining Corp., 86 S.Ct. 1545. In Ashe v Swenson, 90 S.Ct. 1189 (1970) this Court held that the Doctrine of Collateral Estoppel means that when an issue of ultimate fact has been determined by a valid and final judgement, that issue cannot be litigated again by the same parties. "The Constitutional protection against Double Jeopardy necessarily encompasses the doctrine of collateral estoppel." Ashe, id.

Eight "charges" were heard, evidence considered, + Findings made. Charge "A" was dropped, the others "Amended" and "Guilty" Findings then made. The Admin. Parole Division Hearing

Officer (HO) Acted in a judicial capacity to judge Petitioner innocent of parole violation disputes properly before her, and such was a valid and final judgement and the issues could not be litigated again pursuant to Ashe, id.

Discovery - Evid. Hearing - Appt of Counsel

At issue is whether Petitioner had a Right to Discovery, Evidentiary Hearing and/or Appointment of Counsel when Petitioner pled unrefuted facts entitling him to relief and the State, in their Response to Petitioner's 11.07, admitted ignorance of Petitioner's claims and the need for Discovery and Designation of Issues. (App. E, p. 3-4)

In Bracy v Gramley, 117 S.Ct. 1793 (1997) this Court reiterated the power of Federal Courts to allow discovery "to dispose of habeas petitions as law and justice require," Harris v Nelson, 89 S.Ct. 1082, and stated that where "specific allegations ... show reason to believe petitioner may... be able to demonstrate he is entitled to relief, it is the duty of the Court to provide... for an adequate inquiry." Bracy, id. (emphasis added)

The record shows that at all levels, State, Federal District and Circuit Appeals Courts, that Petitioner attempted to gather specific evidence to prove innocence and that no violation ever occurred (App. F + G) but was denied at all levels, despite the State's Response. If the State doesn't refute Petitioner's 11.07 and claims ignorance of the issues, then all decisions thereafter are uninformed and unreliable. This is made more apparent when the Court's FINDINGS (App. C) present an issue of doubt by showing two distinct operating methods for the em device issued Petitioner; as well as successful attempts by the State to deny requests for evidence/information. (App. H + I) There were factual disputes that would have been resolved in Petitioner's favor, entitling him to relief. The Court did not have before it sufficient facts to make a decision, McDonald v Johnson, 139 F3d 1059-60; the State has not afforded Petitioner a full and fair hearing (no action was taken on State's recommendation), Perillo v Johnson, 79 F3d 441, 444 (5th Cir. 1996)(quoting Ward v Whitley, 21 F3d 1355, 1357 (5th Cir. 1994); and Petitioner was diligent in seeking to develop his claim, Drake v Portuondo, 321 F3d 338, 347 (2nd Cir.

2003); Winston v Pearson, 683 F3d 489 (4th Cir. 2012); and extensive documentation was presented to justify Discovery and a hearing, Pike v Guarino, 492 F3d 61, 69 (1st Cir. 2007); and appointment of counsel required for effective utilization of discovery (necessary by State's own Recommendation) and to satisfy interests of justice, 18 U.S.C. §3006(a)(2)(B); U.S. v Doe, 365 F3d 150 (2nd Cir 2004). Petitioner was not on a fishing expedition and asked for specific items and responses to specific questions that would have proven false testimony and that no violation ever occurred. (App. J)

The State is under a duty to divulge all exculpatory evidence/information in their possession, Brady v Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) and this is true even if discovered "post proceeding", Giglio v U.S., 405 U.S. 150, 92 S.Ct. 763 (1972). As the requested evidence/information was is needed to prove the false testimony of Parole Officers Nixon + Davis (Nixon, Davis) it therefore falls under the auspices of Giglio, id, and should have been disclosed to Petitioner on request, and when apparent to the State, because it proves false testimony of Nixon + Davis, which proves no violation occurred which proves Petitioner's innocence. This becomes evident as Petitioner later shows the false evidence but becomes more evident upon perusal of App. K. App. K is copies of Emails from a Dallas, Tx attorney to and from the Parole Board, said attorney trying to assist Petitioner pro bono and file a complaint inre the actions of parole division officials involved herein. They show the State (Parole Board) intentionally misled attorney Virden as to his "standing" to assist Petitioner, and continued the false claim after it was pointed out that Texas Gov't Codes 493.016, 508.054(d) and 508.087 did not apply! They refused to allow him to help or file a complaint. App. L is a hand typed reproduction of the relevant Gov't Codes.

The duty to disclose the evidence began when Petitioner pointed out the false testimony. U.S. v Bagley, 473 U.S. 667, "duty to disclose arises whether request is made or not"; + the duty of Bagley, Brady + Giglio, id, apply when the State learns the requested evidence is exculpatory even though nobody knew, pre-hearing, that DAVIS AND NIXON were going to lie. A reading of the "exception" Code, Tx. Gov't Code 552.103 (App. M) shows they know the evidence/information requested is exculpatory because it can only be read one way in this situation: The evidence can be used to support my criminal appeal and a suit against the Board, State, Division, etc, because if it wasn't exculpatory 552.103 wouldn't apply.

The answers, evidence/information requested proves that all testimony to material facts from NIXON AND DAVIS is false, from the operating methods of the em (object based) to what the various documents Nixon submitted "show" or "reflect" as well as the faulty XT device never being changed, etc.

FALSE TESTIMONY

Using the FINDINGS (App. C), eight (8) instances of false testimony to material facts by NIXON + DAVIS were shown to the 5th Circuit. None of Petitioner's Affidavits or Claims have been refuted, from the op methods of the em to what the documents/records actually show.

Nixon's initial testimony was that if Petitioner got "too far from the base an alert would occur." (App. C, p. 3, lines 3-5). Petitioner then testified that the alerts were false, from a known faulty em device, and that Nixon saw a false alert on 09-16-18 during a home visit while Petitioner was less than 8 feet away from the base. (App. C, p. 3, lines 14-18) Nixon then <u>changed</u> his testimony to say the alert he saw was caused by Petitioner "stepping past his door" (App. C, p. 3, lines 19-20) (from distance based: "too far away" to object based: "door caused the alert"); that the system "<u>showed</u> petitioner was away from his residence" (App. C, p. 7, lines 12-15) and submitted App. N as proof what the system showed (App. C, p. 7, lines 15-16). App. N shows nothing more than that the alerts occurred which weren't disputed, nor does it show any unacknowledged alerts (App. C, p. 7, lines 17-19) and the record contradicts Nixon's claim that the alerts weren't normal or consistent (App. C, p. 4, lines 3-5) where it showed 35 alerts in a 36 day period, as many as eleven on one day. It is physically and electronically impossible to set the em device to alert if a door or wall is passed. App. N, by itself, was nothing but a record of alerts, not what caused them. With Nixon's false testimony, however, they become "evidence" Petitioner stepped past his door (left his residence) to cause the alerts; they were "verified" by false testimony. Nixon's claim that Petitioner said he went to the car, laundry room & vending machine were equally false as the laundry room was the furthest from Petitioner's door at less than 50 feet, with the car less than 20. Petitioner's em was set for 75 feet. If it did alert Nixon's papers wouldn't know why, but it would be further proof the em was faulty if it alerted at 50 feet. (Petitioner sent the only scale copy of his residence to the 5th Cir as proof of the above but Google Maps Streetview/Satellite view of 26 Farrell, Houston, Tx shows the entire complex wasn't even 75 feet long).

This Court held in Mooney v Holohan, 55 S.Ct. 340 (1935) that "a violation of Due Process occurs when there is a deliberate deception... by the presentation of testimony known to be perjured" and in Napue v. Illinois, 79 S.Ct. 1173 (1959) this Court held "the same result obtains when the State, though not soliciting false testimony/evidence, allows it to go uncorrected when it appears." (The H.O. was told the op method at the start but didn't say a word when Nixon changed his testimony) "The testimony is material if there is any reasonable likelihood that the false testimony could have affected the judgement." U.S. v Agurs, 96 S.Ct. 2392 (1976) citing Giglio v U.S., 92 S.Ct. 763 (1972). Petitioner has shown the testimony was false, the H.O. knew it was false and didn't correct it, that it was material in that it was given to refute Petitioner's defense and it affected the judgement when it gave the impression that all the alerts were caused by Petitioner "stepping past his door" or "being away from his residence." While there were several instances of false testimony/perjury by Nixon, his lie as to "stepping past the door" gave them all credence, with Davis claiming the known faulty device was changed.

While parole violation hearings are under the "preponderence" standard of "some evidence", shouldn't that "evidence" be credible and free from taint, or do the holdings in Mooney, Napue, Agurs and Giglio not apply to parole administrative hearings?

RETALIATION

Are paroles free from retaliation for petitioning for redress of grievances? During the first 30 days on Nixon's caseload over 24 alerts were documented and dealt with as the false alerts they were, as well as others Nixon admitted that weren't documented, and all were discounted as false. After Nixon caused Petitioner to lose days of work, pay and put him in jeopardy of losing his job as Shop Manager at the Collision Repair Shop, as well as other job opportunities, and tried to impose conditions on Petitioner he'd already met, Petitioner called Asst. Reg. Dir. Weston to complain about Nixon, on Sept. 12, 2018. Weston spoke to Nixon who immediately called Petitioner back in from work and chewed him out. He also told

Petitioner that he was going to regret calling Ms. Weston on him. Six (6) days later Petitioner was arrested for the 1st thing Nixon could come up with... the next set of false alerts (09-14-18, 09-15-18 and 09-16-18) (the last set being already dealt with on 09-12-18 before the call was made). His lie of stepping past the door causing the alerts shows he knew they were false but he had to lie to give them credence as he was carrying out his threat about Petitioner going to "regret calling Ms. Weston on him." It became more apparent at the hearing when Petitioner told Nixon "You're lying! You were standing there when it went off while I was 8 feet away!" Nixon, having forgotten already admitting he saw it alert on 09-16-18 while Petitioner was 8 feet away, could either admit it was false (as 8 feet proved) or lie, and he chose to lie when he said "It went off because you stepped past your door" but if it wasn't false then why wasn't it included in the "charges"?

Nixon's attitude changed when he learned petitioner was recording all contacts with parole officials and had him on tape threatening. The recorder was in jail property and Petitioner couldn't release it to himself; he had no attorney to release it to but asked the H.O. to get it + she refused, and while the H.O. did offer Petitioner additional time to prepare it was for the "amended" charges and Petitioner still couldn't have gotten the recording: Nobody to release it to. Nixon's attitude became belligerent upon learning of the recording, and listening to the tape of the latter part of the 2nd hearing reveals his animosity towards petitioner, his retaliatory animus. His perjured testimony shows his "desire" to cause Petitioner's parole to be revoked at any cost.

Petitioner had the right to complain about Nixon to supervisors; Nixon's statement about Petitioner regretting calling Mr. Weston shows his intent to retaliate; his retaliatory act(s) were to file false violations and have Petitioner arrested; and had Nixon not filed false violation charges Petitioner's parole would not have been revoked, satisfying the requirements of Woods v Smith, 60 F3d 1161, 1166 (5th Cir. 1995) and Johnson v Rodriguez, 110 F3d 299, 310 (5th Cir. 1997) and the refusal to grant relief after all herein begs the question: Does a parolee enjoy Constitutional protections against acts as those alleged herein?

Insufficient Notice

Petitioner is entitled to know the nature and cause of the accusation against him per the Sixth U.S. Amendment; Morrissey v Brewer, 408 U.S. 471, 488-89 (1972), and "failed to comply with electronic monitor program by getting a Bracelet Gone alert at..." doesn't tell Petitioner what he allegedly did to cause the alert, and more than one reason exists for a BG alert. As such, there is no cause to the accusation. The "original" charge was said to be vague & the "amendment" said the same thing only restated. The "amendment" is still vague and Petitioner has no idea what to prepare against; in this case... he's.

Right to Parole

Petitioner contends he has a right to parole if he disproves the reasons for denial as false or unfounded. Monroe v Thigpen, 932 F2d 1437 (1991) holds "it is a denial of due process to be denied parole when the Board relies upon false information in denying parole."

Petitioner was brought up for parole and given a 5 year set-off for:

> 2D. Record indicates the ... offense has elements of brutality, violence ... such that the offender poses a continuing threat to public safety;

and

> 5D. Record indicates unsuccessful period of supervision on previous ... parole ... that resulted in incarceration.

By virtue of being paroled in 2014 all reasons to deny parole were removed from consideration, leaving only acts by Petitioner between July 2014 (when paroled) and September 2018 (when arrested) available as reasons to reintroduce denial reasons. As Petitioner was never accused of any allegations of brutality or violence, 2D cannot be reintroduced as a reason to deny parole as that "obstacle" was overcome in July 2014.

Petitioner has shown herein that the revocation of his parole was based on false charges and testimony and there is no reason/justification to use 5D either, and the denial of parole for reasons shown false violates his right to have parole eligibility decided on facts and is a Due Process violation, Monroe, id. Without a legitimate reason to deny parole, Petitioner has a right to parole.

No Evidence

The "guilty" finding violates Petitioner's right to Due Process of Law under the Fifth Amendment when there was/is no evidence to support the finding. Petitioner incorporates all arguments herein in support of each other.

Petitioner has already shown that Nixon gave false testimony to support his false charges, and the documents didn't say what he claimed, rendering them as no evidence. Further, the alleged violations were SISP violations and Petitioner was removed from SISP by the

Parole Board. (App. O) As the Parole Board is the only Agency that can impose Special Conditions (SISP, GPS)(App. P) Nixon's claim that he "treated Petitioner like he was on SISP" is of no effect. As that's the same as imposing Special Conditions and Nixon nor the Parole Division (who can only "regulate" parolees under Board imposed conditions) can impose Special Conditions. Petitioner was on Condition T, Curfew Monitor, and Davis' testimony made it clear that Petitioner wasn't on SISP when he said Petitioner went all over town doing assessments on vehicles and called After to tell him (Davis) where he'd gone. (App. D) Having failed to prove the base element of the "charge" (that the Petitioner was on Board imposed SISP Special Condition) the entire charge must fall.

Un Constitutional Laws

Texas Gov't Codes 552.028(a)(1) and 552.103 are unconstitutional as applied to Petitioner and violates this Court's holdings in Brady v Maryland, id, US v Bagley, id, and Giglio

v. US, id, when they serve to deny Petitioner evidence that would serve to prove his innocence of parole violations, and serves only to deny Petitioner of meaningful access to Courts to petition for redress of grievances (appeal) and further, Gov't Code 552.028(a)(1) serves to deny Petitioner Equal Protection of the laws when it serves to deny Petitioner of exculpatory evidence/information because he is in prison. (App. H)

The State of Texas, Parole Board and Parole Division, as the "system" that facilitated the violation process, have a duty under Brady, id, and Giglio, id, to disclose the evidence to Petitioner once it was shown the evidence was exculpatory in nature and their denial letters, and Emails with attorney Vieden, show they know the evidence proves Nixon's false statements and Gov't Code 552.103 shows it is to Petitioner's benefit and no other interpretation is possible. The Gov't Codes, as applied, are unconstitutional in that they deny exculpatory evidence that would prove Petitioner innocent.

Timely Rehearing Request Refused

Petitioner's Motion for Certificate of Appealability (COA) was denied May 04, 2021. (App. A) The Clerk mailed said denial to Petitioner's old Unit of Assignment in Amarillo, Texas despite having Petitioner's updated address in March 2021 and had already mailed other letters, etc, to the new address between March - May 2021. The order denying COA was forwarded from Amarillo + Petitioner did not get it until May 31, 2021, but filed his Request for Rehearing/Rehearing En Banc June 06, 2021, six days later, and explained the mailing mix-up by the Clerk as well as provided the envelope post-marked May 05, 2021 with the Amarillo, Texas zip-code (79107) stamped thereon by the Post Office. The Clerk refused to acknowledge their mistake, designated it as an "out-of-time" appeal, and it was denied filing July 16, 2021. (App. B) With COVID slowing things down + the mistake in mailing, even a week mailing time would have served no purpose.

The Mandate was issued May 26, 2021 And not Received until June 07, 2021, after Petitioner filed for Rehearing. Request to Recall Mandate was filed, Addressing many points herein, but no word has since been heard from the Court, despite Petitioner meeting the miscarriage of justice standard as established in Calderon v Thompson, 523 U.S. 538, where he showed innocence and/or, with the FINDINGS of the District Court, at least a strong question of a just result. It should be held, based on the FINDINGS, that "No reasonable fact finder would have convicted him in light of the evidence in his habeas petition." Sawyer v Whitley, 112 S.Ct. 2514, citing Schup v Delo, 115 S.Ct. 851, 865 (1995).

Conclusion Summary

Just as in Murray v Carrier, 106 S.Ct. 2369 (1986), citing Pyle v Kansas, 63 S.Ct. 177, Petitioners paper are inexpertly drawn but should be held to set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities... and from the deliberate suppression by those same authorities of evidence favorable to him." These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution and... if proven, would entitle petitioner to release from his present custody." Mooney v Holohan, 294 U.S. 103.

These allegations are proven by the Findings (App C) and the denial letters (App. H+I) as well as the Emails impeding assistance of counsel (App. K).

It should be noted that at no time herein, in no forum, has Petitioner's claim of the em operating methods, what the documents do or don't show, or the false testimony of Davis and Nixon, or his many Affidavits, been refuted by the State, Parole Division or Parole Board authorities and, as the 7th Circuit held in U.S v Kis, 526 F3d 536, an Affidavit is held as prima facie evidence, Petitioner has submitted prima facie evidence, unrefuted, of Constitutional deprivations herein.

The facts are: No violation ever occurred; DAVIS + NIXON lied to cause a "guilty" finding; the condition allegedly violated was not a condition of Petitioner's parole as imposed by the TEXAS Board of Pardons And Paroles; Nixon brought the "charges" knowing they were false as retaliation for Petitioner complaining to supervisors about him; the Parole Board + Parole Division refuse Petitioner access to exculpatory evidence that proves DAVIS + NIXON's false testimony AND impeded/refused to allow attorney Robert Virden to assist Petitioner or file a complaint about DAVIS + NIXON's actions; and the Board cites state laws that allow them to suppress evidence that proves Petitioner's innocence.

If the State authorities refuse to allow exculpatory evidence, And the lower Court's refuse to allow the Discovery of that specific evidence, then what recourse is left to a Petitioner to get exculpatory evidence?

When the District Court's FINDINGS present a question and the Circuit Court of Appeals ignores it, what recourse is available?

Should a Petitioner be held at fault for a Clerk's proven mistake?

When the answers to questions as those by Petitioner in App. J prove false, perjured testimony and innocence, shouldn't something so simple be allowed to prevent a miscarriage of justice?

Is a parolee still allowed Constitutional protections against actions by State actors as those alleged herein.

The answer to one question will prove to the Court the validity of all claims herein: "Can the XT em device of the type issued to Petitioner (XT #3550397) be set to alert if a door/wall is passed or if a preset distance is passed?"

... Petitioner has found NO cases addressing any of the issues presented herein as they apply to parolees or parole violation hearings by an administrative agency, and parole violation hearings are conducted across the country every day, necessitating resolution of the issues herein. Petitioner also still has access to the em device to use to prove all claims herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Larry Gene Francis

Date: Aug. 21, 2021

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