

JUN 03 2021

OFFICE OF THE CLERK

No. 21-6349

IN THE
SUPREME COURT OF THE UNITED STATES

Victor Hurns — PETITIONER
(Your Name)

vs.

Lynn Fitch — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Victor Hurns #09848
(Your Name)

unit-30/c-Bldg.
(Address)

parham, ms 38738
(City, State, Zip Code)

662-745-6611
(Phone Number)

ORIGINAL

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QUESTION(S) PRESENTED

I.] WHETHER THE DENIAL OF PETITIONER'S APPLICATION FOR LEAVE TO PROCEED IN THE TRIAL COURT BY THE MISSISSIPPI SUPREME COURT WAS CLEARLY ERRONEOUS AND CONTRARY TO WELL ESTABLISHED PRECEDENTS BY THE HIGH COURT FOR OVER THE LAST FOUR DECADES AS WELL, AS MISSISSIPPI SUPREME COURT.

II.] DOES THE FACTUAL/ACTUAL INNOCENT EXCEPTION APPLY TO FIFTH AMENDMENT DOUBLE JEOPARDY CLAIM, WHERE THERE IS A JUDICIAL ACQUITTAL ON THE MERITS IN THE TRIAL RECORD!!

III.] WHETHER PETITIONER IS BEING HELD IN UNLAWFUL CUSTODY IN VIOLATION'S OF THE 5th, 6th + 14th AMENDS. U.S.C.A.)

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

1. In RE: Victor Hurms - /no- 21-90005
July 19, 2021, Fifth circuit court of
Appeals (unpublished)
2. In RE: Victor Hurms /no: 2:97-CV-26
January 14, 1997, United States district
court.
3. Victor Hurms v. STATE of mississippi, E /miss,
march 9, 2021, /no: 2013-M-01245 2 /supreme
court
4. Victor Hurms. v. STATE of mississippi,
(90-1A-1068) 616 so. 2d 313 (miss 1993)
(DIRECT APPEAL) (APRIL 1, 1993)

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APPENDIX G -	DIRECT APPEAL IN HUNN V. STATE - 616 SO.2D 313 (MISS. 1993) (4 PAGES) (EXHIBIT RECORD) ATTACHED EXHIBIT RECORDS ATTACHED (P-10)

TABLE OF AUTHORITIES CITED

CASES	(1998)	PAGE NUMBER
<u>Burke v. United States</u>	437 U.S. 1	8,
<u>Colo v. Arkansas</u>	338 U.S. 345 (1949)	2, 3,
<u>Evitts v. Lucey</u>	470 U.S. 1065 (1984)	1,
<u>Fong Foo v. United States</u>	369 U.S. 141 (1962)	2, at 143
<u>United States v. Scott</u>	437 U.S. 82 (1978)	3, 4, 5, 6, 7, 8,
<u>Small v. Pennsylvania</u>	496 U.S. 140 (1986)	2, at 142
<u>Strickland v. Washington</u>	466 U.S. 668 (1984)	8, 9, 10
<u>Samabina v. United States</u>	98 S.Ct. 2170, (1978)	p-8
STATUTES AND RULES	<u>State v. Alcornhill</u>	251 Miss. 218 -- p-1, 2, 3,
<u>Capital Murder Statute</u>	Miss.	
	Code Ann - 99-3-19 (a)(e)	
<u>Depraved Heart Murder</u>		
<u>Statute</u>	Miss. Code Ann	
	99-3-19 (1)(b)	

OTHER

Fifth, Sixth And 14th
Amendments To the United
States Constitution.

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 _____ 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 _____ 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 A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. (NO-2013-M-01245) (SEE EXHIBIT)
(RECORDS ATTACHED)

The opinion of the MISSISSIPPI SUPREME (DIRECT APPEAL) court appears at Appendix G to the petition and is

- ☒ reported at 616 So. 2d 313 (Miss. 1993) SEE EXHIBIT-RECORDS; 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 MARCH 9, 2021
A copy of that decision appears at Appendix A.

☐ 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).

(petitioner includes prison mailbox-rule)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(The Double Jeopardy clause of the Fifth Amendment states that no person shall be subject for the same offense to be twice put in jeopardy of life or limb (U.S. Const. Amend V.))

(All citizens accused of a crime has a right to effective assistance of counsel. (U.S. Const. Amend VI))

(All defendants have a right to be informed of the nature and cause of the accusation against him under the United States Constitution. (6th Amend. U.S.C.A.))

"STATEMENT OF THE CASE"

On October 25, 1989, A Bolivar County grand-jury in Mississippi, indicted the defendant, Victor Huras, along with two co-defendants for capital murder, in connection with the death of Robert Anderson Jr. while aiding, abetting and encouraging others, ~~in~~ the commission of sexual-battery of Robert Anderson Jr. in violation of Mississippi code section - 97-3-19(2)(c) and section - 97-3-95 (a) and (b), the trial began on May 28, 1990, a grand jury was questioned, selected and impaneled to try the case of capital murder against defendant, Victor Huras, at the conclusion of the state case in chief,

the defendant moved the Trial Court for a directed Verdict of Acquittal or Alternatively, To dismiss the capital murder portion, Arguing that the STATE of Mississippi had failed To prove that the Victim death occurred AS A Result of Action's Taken during the commission of a Sexual - Battery. The Trial Judge determined that the Evidence was Insufficient To support a charge of Capital murder on the underlying Felony of Sexual - Battery. The Trial Judge entered a Ruling Granting the defendant a directed Verdict of Acquittal on the capital murder charge And Excluded

All Evidence of the underlying
Felony of sexual Battery, But, Allowed
the STATE of Mississippi To Redraw
the Jury Instructions To proceed on
"Simple murder" As A lesser Included
offense. The defendant made A
timely objection. Following the Return of
the Jury Verdict, the defendant
Victor Huron Renewed His Request
for A peremptory Instruction via A
motion for A judgement of Acquittal
notwithstanding the Verdict of the
Jury. In the Alternative, for A
new Trial. The Trial Judge Entered
Judgement Finding Him guilty of
Simple murder And sentenced Him
to life without parole As A
Habitual offender under Miss. Code
Ann - 99-19-81,

REASONS FOR GRANTING THE PETITION

on March 9, 2021, the Mississippi Supreme Court's finding that petitioner's double jeopardy claim against being prosecuted and placed in jeopardy twice for the same offense after an acquittal on the merits is insufficient to merit waiving of the procedural bars are contrary to well established precedents in the United States Supreme Court over the last forty four years. This Court in United States v. Scott - 437 U.S. 82, 98 S.Ct 2187, (1978) recognized that the trial judge's characterization of his own action can not control the classification of the action. This Court further held that an acquittal of a charge occurs when a ruling of a judge, whatever its label, Actually → → →

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Represents A Resolution [In The
Defendants Favor], correct or not of
some or All of The Factual Elements
of The Offense Charged. (Id. at 97,
98 S.Ct 2187.)

THE TRIAL RECORD AT PAGE-628-,
ATTACHED TO THE PETITION IN THE
"EXHIBIT-RECORDS" AT (APPENDIX-D) (PAGE-34)
SHOWS PETITIONER ATTORNEY, MR.
PEARSON MAKING A ORAL MOTION TO
THE TRIAL JUDGE FOR A DIRECTED-
VERDICT IN FAVOR OF PETITIONER
ON THE MERITS AS TO THE CHARGE
OF CAPITAL MURDER OR ALTERNATIVELY,
TO DISMISS THE CAPITAL PORTION ON
THE GROUNDS THAT THERE ARE NOT
SUFFICIENT EVIDENCE TO SUSTAIN A
VERDICT THAT THE DEATH OF THE
DECEDENT WAS OCCASIONED BY A BLIND,

OR A WOUND OR A TRAUMA, THAT
OCCURRED DURING THE COMMISSION OF A
SEXUAL BATTERY. (SEE ATTACHED)
(Appendix - d, Exhibit - Records, (1-page))

Additionally, the Trial Record at
Page - 646 - shows the Trial Judge
directing a Verdict to the Jury
that they would now be considering
the charge of murder. Following
petitioner's Acquittal on the merits
for capital murder. (SEE ATTACHED)
(Appendix - E, Exhibit - Records, (1-page))

petitioner STATES that pursuant to
well established Federal law
by the United States Supreme Court
when a court dismisses criminal
charges against a defendant on
the merits,

EVEN BY MISTAKE, THE DISMISSAL
AMOUNTS TO AN ACQUITTAL, AND THE
DEFENDANT MAY NOT AGAIN BE PUT TO
TRIAL. BUELLS V. UNITED STATES - 437 US 1,
98 S.Ct 2141, 57 L.Ed 2d 1, (1978) Fong Foo V.
UNITED STATES - 369 U.S 141, 82 S.Ct 671, 7 L.Ed
2d 629 (1968) SANABRIA V. UNITED STATES -
437 US 54, 98 S.Ct 2170, 57 L.Ed 2d 43 (1978)

([A] JUDGEMENT THAT THE EVIDENCE IS
LEGALLY INSUFFICIENT TO SUSTAIN A
GUILTY VERDICT CONSTITUTE AN ACQUITTAL
FOR PURPOSE OF THE DOUBLE JEOPARDY
CLAUSE. SMALLIS V. PENNSYLVANIA - 476
US, 140, 142, 106 S.Ct. 1745 (1978))

PETITIONER STATES THAT IN UNITED
STATES V. SCOTT - 437 US 82, 98, 98 S.
CT 2187 (1978) THE UNITED STATES
SUPREME COURT EXPLAINED IN "SCOTT,"

(that procedural dismissals And)
(substantive rulings differ under)
(double Jeopardy consequences, "[4]th)
(law attaches particular significance)
(to an Acquittal" so a merits Related)
(Ruling concludes the proceedings,
(Absolutely.) (F.d. at 91, 98 s.ct 2187)

petitioner states that the Trial Record
At pages - 628 And 646, makes a
"prima facie" showing that petitioner
was "Judicially Acquitted" on the merits,
where the prosecutor failed to prove
the ([casual - nexus... Engaged in the])
(commission of... must be shown...)

(see Fisher v. State - 481 So 2d 203 (Miss. 1985))
purging petitioner of any further
prosecution or criminal liability in

this case.... (p-22) Scott supra,
Burke supra,
Sanabria supra

THE TRIAL JUDGE VIOLATED PETITIONER'S
FIFTH AMENDMENT PROTECTION UNDER THE
DOUBLE JEOPARDY CLAUSE OF BEING PROSECUTED
AND PLACED IN JEOPARDY TWICE OF LIFE
AND LIMB FOR THE SAME OFFENSE
FOLLOWING HIS JUDICIAL ACQUITTAL ON THE
MERITS FOR CAPITAL MURDER.

PETITIONER STATES THAT THE MISSISSIPPI'S
SUPREME COURT'S ORDER AND OPINION DATED
MARCH 9, 2021, THE COURT OVER-LOOKED
THE FACTS IN THE TRIAL RECORD AT
(PAGE - 646, (APPENDIX - E) (SEE EXHIBIT - RECORDS)
OF THE TRIAL JUDGE DIRECTING THE JURY
TO FIND PETITIONER GUILTY OF SIMPLE-
MURDER, (DEPRAVED HEART) UNDER MISS.
CODE ANN - 97-3-19(1)(b) WHEN PETITIONER
WAS FOUND INNOCENT OF CAPITAL-MURDER
UNDER MISS. CODE ANN - 97-3-19(2)(c) ON
THE MERITS. (SEE EXHIBIT - RECORDS AT)
(APPENDIX - E)

PETITIONER STATES THAT HIS ATTORNEYS
WERE INEFFECTIVE ON DIRECT APPEAL
UNDER Evitts v. Luce - 470 US 1065 (1984)

COUNSEL WAS DEFICIENT UNDER STRICKLAND
V. WASHINGTON - 466 U.S. 668 (1984) WHEN
COUNSEL FAILED TO RAISE PETITIONER'S
JUDICIAL ACQUITTAL ON THE MERITS
BASED ON A DIRECT VERDICT UNDER THE
AUTHORITY OF STATE V. THORNTILL - 251 MISS
718 (1965) SINCE 1965, THE MISSISSIPPI
SUPREME COURT MADE IT CLEAR IN
Thorntill, IF A DEFENDANT IS ACQUITTED
ON THE MERITS BY REASON OF A DIRECT
VERDICT, SUCH ACQUITTAL IS A BAR
TO ANY FUTURE ACCUSATION FOR THE
SAME OFFENSE. Id. at 723, ALSO
SEE ARTICLE-3, SECTION-22, MISS.
CONST. OF 1890.

petitioner was prejudiced following his
acquittal on the merits when the
trial judge modified the judgment
of acquittal on the merits. By
allowing the state to redraw the
jury instructions to prosecute and
place petitioner in jeopardy twice
for the same offense, when by law,
petitioner should have been released
from custody, not ambushed on a new
depraved heart murder jury instruction,
whose elements are not included in
petitioner's indictment no # 7230, (see
Appendix-B) (Exhibit-Records) (1-page)
(petitioner was convicted by jury)
(instruction on a depraved heart)
(murder charge that he was never)
("indicted for" and he was never)
("tried for" (p-25)) see Cole v. Arkansas
338 U.S. 345 (1949)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, 09848

Victor H. Huns

Date: August 23, 2021

(Exhibit Records)

Appendix - A - (Two (2) page order And)
(opinion By the Mississippi Supreme Court)
(dated march 9, 2021)

Appendix - B - (Capital murder Indictment)
(no-7250) (1-page)

Appendix - C - (Two (2) page Judgement)
(And sentence)

Appendix - d - (TRIAL Record 1-page)
(p-628)

Appendix - E - (TRIAL Record page-646)
(1-page)

Appendix - F - (Jury Instruction no-7250)
(S-I-B - DEPRAVED HEART)
(1-page)

Appendix - G - (Direct Appeal On Hurns)
(U. STATE - 616 so 2d 313 (MISS. 1993))
(4-PAGES)

Victor Hurns