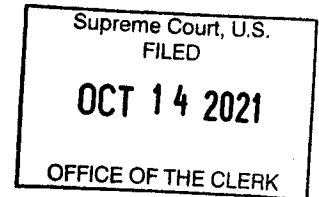


No. **21-6571** **ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES



RUBEN ORLANDO BENITEZ—PETITIONER

VS.

STATE OF MISSISSIPPI—RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI

RUBEN ORLANDO BENITEZ

SMCI P.O. BOX 1419

LEAKESVILLE, MS 39451

NO PHONE AVAILABLE

## **QUESTION(S) PRESENTED**

### **Question No. 1**

Whether the record of facts support rehearing of the proposition

### **Question No. 2**

Whether the Mississippi Court of Appeals/Supreme Court manipulated the file of record

### **Question No. 3**

Whether the Mississippi Court of Appeals/Supreme Court has actively hindered litigation

### **Question No. 4**

Whether the Application for Leave to Proceed into Trial Court-with-Post-Conviction for Collateral Relief was successive

## 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:

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Mississippi Court of Appeals/Supreme Court

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☐ is unpublished.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☐ is unpublished.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 \_\_\_\_\_ 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☒ is unpublished.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☒ is unpublished.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: 09-29-2021, 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 \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

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

## LIST OF AUTHORITIES

### MISSISSIPPI CONSTITUTION

ARTICLE 3 SEC. 14

### MISSISSIPPI STATE CASES

<u>BOSARGE V. STATE</u> , 141, So. 3d 24, 26 (MISS CT. APP. 2014).....	2
<u>BROOKS V STATE</u> , 209 MISS 150, 46 So. 2d 94 (1950).....	2, 8
<u>FLUKER V STATE</u> , 170 So. 3d 471, 475 (MISS 2015).....	2
<u>LAMBERT V STATE</u> , 941 So. 3d 804 (2006).....	2, 4
<u>MOORE V STATE</u> , 986 So. 2d 928, 932 (MISS 2008).....	2
<u>READ V STATE</u> , 430 So. 2d 832 (MISS 1983).....	2
<u>ROWLAND V STATE</u> , 42 So. 3d 503 (2010).....	2, 5
<u>SIMS V STATE</u> , 227 So. 3d 1167 (2017).....	2, 5
<u>SMITH V STATE</u> , 149 So. 3d 1027, 1032 (MISS 2014).....	12
<u>SMITH V STATE</u> , 477 So. 2d 191 (MISS 1985).....	2
<u>STOVALL V STATE</u> , 873 So. 2d 1056 (2004).....	2, 4

### MISSISSIPPI ANNOTATED CODE

99-39-21 (1)  
99-39-5  
99-39-5-(1)(a)  
99-39-21 (1)  
99-39-23  
99-39-27

## UNITED STATES CONSTITUTION

### FOURTH AMENDMENT

## UNITED STATES CASES

IN re DEMOS, 500 U.S. 16, 19, 111 S.Ct. 1569, 1571, 114 L. Ed. 2d (1991)(MARSHALL, J.),...12

## OTHER

THE PRISON LITIGATION REFORM ACT; THREE STRIKES AND YOU'RE OUT OF COURT; IT MAY BE EFFECTIVE, but IS IT CONSTITUTIONAL? 70 TEMP. L. REV. 471-75 (1997) JOSEPH T. LUKENS...

## INDEX TO APPENDICIES

APPENDIX A----- FILED APPLICATION FOR LEAVE TO PROCEED INTO TRIAL COURT-  
WITH-MOTION FOR POST-CONVICTION COLLATERAL RELIEF

APPENDIX B----- EXHIBITS 1-13 (POST-CONVICTION)

APPENDIX C-----ORDER ISSUED SEPTEMBER 29, 2021



## EXHIBITS

1. ORDER GRANTING STAY DATED *FEBRUARY 10, 2016*
2. PAGE 1 OF SUBMITTED PETITION FOR EVIDENTUARY HEARING
- ~~3. PAGE 1 OF FILED SUBMITTED PETITION FOR EVIDENTUARY HEARING~~  
CAUSE NUMBERED 2013-CT-00469-SCT
4. ORDER DENING SUBMITTED PETITION FOR EVIDENTUARY HEARING BEING  
TREATED AS MOTION FOR POST-CONVICTION
5. CLERK DOCKET 2013-CT-00469-SCT (REMOVED/DELETED FROM MS COURT  
RECORDS)
6. ORDER DENING APPLICATION FOR LEAVE TO PROCEED INTO TRIAL COURT-  
WITH-POST CONVICTION COLLATERAL RELIEF DATED *JUNE 29, 2021*
7. CLERK DOCKET 2017-M-00681 CREATED *MAY 15, 2017* DOCKETING  
PETITION FOR EVIDENTUARY HEARING

EXHIBITS CONT.

8. MANDATE DATED *MAY 18, 2017* (ISSUED BY THE MS COURT OF APPEALS  
WITHOUT JURISDICTION)

9. MANDATE DATED *JUNE 10, 2014*

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10. ORDER REMANDING OUT-OF-TIME MOTION FOR REHEARING TO MS  
COURT OF APPEALS

11. NOTICE RECALLING MANDATE ISSUED *JUNE 10, 2014*

12. ORDER RECALLING MANDATE ISSUED *JUNE 10, 2014* BY MS COURT OF  
APPEALS DATED *JULY 23, 2015*

13. ORDER DISSMISSING MOTION TO RECIND FOR LACK OF JURISDICTION  
DATED *OCTOBER 29, 2014*

IN THE SUPREME COURT OF THE UNITED STATES

RUBEN ORLANDO BENITEZ  
PETITIONER

V. CAUSE NUMBER \_\_\_\_\_

STATE OF MISSISSIPPI  
RESPONDANT

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**WRIT OF CERTIORARI**

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Comes now Indigent Pro Se Petitioner Ruben Orlando Benitez, without the benefit of counsel, filing this “Writ of Certiorari” in compliance with the Supreme Court of the United States Rule 14. Indigent Pro Se Petitioner Benitez provides the following information to wit:

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## JURISDICTION

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Jurisdiction is vested in the Supreme Court of the United States pursuant to the last order issued on September 29, 2021 by the Mississippi Supreme Court over a submitted “Application for Leave to Proceed Into Trial Court”-with-“Motion for Post- Conviction Collateral Relief” asserting and fully supporting the aspects of Mississippi Code Annotated 99-39-5, 99-39-5 (1)(a), 99-39-21 (1), 99-39-23, & 99-39-27 which was docketed asserting and fully elaborating justification describing the violation of fundamental constitutional rights of sentence and due process which the Mississippi Court of Appeals/Supreme Court, by its own precedence, has acknowledged cannot be precluded by time or res judicata. Brooks v. State, 209 Miss 150, 46 So. 2d 94 (1950); Read v. State, 430 So. 2d 832 (Miss 1983); Smith v. State, 477 So. 2d 191 (Miss 1985); Stovall v. State, 873 So. 2d 1056 (2004); Lambert v. State, 941 So. 2d 804 (2006); Moore v. State, 986 So. 2d 928, 932 (Miss 2008); Rowland v. State, 42 So. 3d 503 (2010); Bosarge v. State, 141 So. 3d 24, 26 (Miss Ct App 2014); Fluker v. State, 170 So. 3d 471, 475 (Miss 2015); Sims v. State, 227 So. 3d 1167 (2017)

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**WHETHER THE RECORD OF FACTS SUPPORT GRANTING OF  
THE PROPOSITION**

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On February 10, 2016 the Mississippi Supreme Court Justice Leslie D. King filed an order **(EXHIBIT #1)** which granted a “stay” of mandate for Pro Se Indigent Petitioner Benitez to continue the litigation of his conviction with no set time frame, stipulation, or requirement associated with such.

On May 13, 2017 Pro Se Indigent Petitioner Benitez filed a “Motion for Evidentiary Hearing” **(EXHIBIT #2)** to the Mississippi Court of Appeals/Supreme Court. The Motion was docketed and assigned cause number **2013-CT-00469-SCT** and accepted on **May 15, 2017**. The acceptance and docketing **(EXHIBIT #3)** of said Motion continues the “stay” of mandate without hindrance or stipulation. The Mississippi Supreme Court reviews the Motion and considers it a “Motion for Post-Conviction.” In the Court’s order **(EXHIBIT #4)** issued on January 10, 2018 the Motion is denied pursuant to Miss Code Ann. 99-39-21 (1). However, Pro Se Benitez asserts once the court determined the Motion to be a “Motion for Post-Conviction,” the court had an obligation to view the

filing as “not properly before the court” and return the Motion to Pro Se Benitez due to the lack of the following:

1. Application for Leave To Proceed Into Trial Court
2. Statement of Facts
3. Certificate of Interested Persons
4. Concise resolution

All of the above mentioned, are unequivocally required in a court when filing for an “Application for Leave to Proceed Into Trial Court-with-Motion for Post-Conviction Collateral Relief” to the Mississippi Court of Appeals/Supreme Court. Therefore, the Mississippi Supreme Court erred in ruling on the considered Motion as it is a well-established fact that a conviction which was determined by the Mississippi Circuit Court through trial by jury will be “initially” resolved by the same Mississippi Circuit Court through “Motion for Post-Conviction Collateral Relief.” The Mississippi Court of Appeals/Supreme Court has no standing to rule on “Motions for Post-Conviction Collateral Relief” as an “initial” ruling Court. The Mississippi Court of Appeals/Supreme Court has the authority to rule on “Motions for Post-Conviction Collateral Relief” as an “appealable” Motion, only after said Motion would be ruled upon by the Mississippi Circuit Court as established through years of judicial precedence. *Stovall v. State*, 873 So. 2d 1056 (2004); *Lambert v. State*, 941 So. 2d 804 (2006);

*Rowland v. State*, 42 So. 3d 503 (2010); *Sims v. State*, 227 So. 3d 1167 (2017)

Given the aforementioned State Legislative approved procedures, the Mississippi Court of Appeals/Supreme Court committed plain error in the denial of the considered and acknowledged “Motion for Evidentiary Hearing” which was considered to be a “Motion for Post-Conviction.

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**WHETHER THE MISSISSIPPI COURT OF APPEALS/SUPREME  
COURT MANIPULATED THE FILE OF RECORD**

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Moreover, the issuance of cause number **2013-CT-00469-SCT** to said Motion clearly establishes an undisputable “file of record” on the Clerk Docket of Indigent Pro Se Petitioner Benitez in the Mississippi Court of Appeals/Supreme Court. Therefore, it is without cause, justification, or explanation that cause number **2013-CT-00469-SCT** does not appear on any docket search of the data base of the Mississippi Court of Appeals/Supreme Court website. Nonetheless, Pro Se Benitez supplies both, (1) an actual Clerk Docket with the aforementioned cause number **(EXHIBIT # 5)** and (2) the submitted “Motion for Evidentiary Hearing”

that was assigned the exact same cause number upon the filing and acceptance of said document. Pro Se Benitez has been relentless in the attempts to get the Mississippi Court of Appeals/Supreme Court to provide an explanation for Clerk Docket 2013-CT-00469-SCT being deleted from the Court data base. The clearest presumption is that the Mississippi Court of Appeals/Supreme Court has overlooked/manipulated the correct filings of litigation by Indigent Pro Se Petitioner Benitez and the Mississippi Court of Appeals issued a mandate on a different cause number 2013-CT-00469-COA without cause or jurisdiction, which does not include the submitted and accepted “Motion for Evidentiary Hearing” filed and accepted on **May 15, 2017** by the Mississippi Supreme Court, “maintaining jurisdiction,” before the mandate was issued by the Mississippi Court of Appeals which “lacked jurisdiction” on **May 18, 2017**.

Pro Se Benitez asserts, the order (**EXHIBIT # 6**) issued by the Mississippi Court of Appeals/Supreme Court on June 29, 2021 bares the preponderance of the evidence needed by Pro Se Benitez to clearly expose the manipulation, as it attempts to justify a denial with a mandate which does not appear on Clerk Docket 2013-CT-00469-SCT or on any other docket associated to the submitted and accepted “Motion for Evidentiary Hearing” to the Mississippi Court of Appeals/Supreme Court.



Presented differently, the Mississippi Court of Appeals/Supreme Court created a new Clerk Docket 2017-M-00681 which does not include any of the prior procedural court filings [Rehearing, Out-of-Time Rehearing, Writ, etc.] of Indigent Pro Se Petitioner Benitez without assigning said docket number to the document. However, Indigent Pro Se Petitioner Benitez asserts, this docket (**EXHIBIT # 7**) would also present the exact plain error committed by the Mississippi Court of Appeals/Supreme Court as it also acknowledges the filing, acceptance, and docketing of the “Motion for Evidentiary Hearing” on **May 15, 2017** which would also continue the “stay” of mandate and makes the mandate issued on **May 18, 2017**, after the acceptance and docketing of the filed “Motion for Evidentiary Hearing,” moot.

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**WHETHER THE MISSISSIPPI COURT OF APPEALS/SUPREME  
COURT HAS ACTIVELY HINDERED LITIGATION**

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The recall/nullification of the mandate issued on May 18, 2017 (EXHIBIT # 8) is required as was the recall of the mandate issued on June 10, 2014 (EXHIBIT #9) which the Honorable Judge Dickinson ordered (EXHIBIT # 10) to be recalled on March 30, 2015 numbered order # 2015-254. The recall of said mandate (EXHIBIT # 11) on July 28, 2015 was an admission of error (EXHIBIT # 12) by the Mississippi Court of Appeals on July 28, 2015 numbered order # 2015-254 and a clear depiction of manipulation hindering the litigation of Indigent Pro Se Petitioner Benitez (EXHIBIT # 13) as the order granted the recall with the exact same premise the Mississippi Court of Appeals used to deny a prior Motion. Given the seriousness of the errors, which are clearly illustrated by/on the removed Clerk Docket 2013-CT-00469-SCT, and a life sentence being too significant a deprivation of liberty to be subjected to a procedural bar, the Mississippi Court of Appeals/Supreme Court must be compelled to be stewards and faithful to uphold the spirit of their precedence of Brooks

alive. Thus the granting of the “Application for Leave to Proceed Into Trial Court” –with- “Motion for Post-Conviction Collateral Relief” is constitutionally warranted as no person can be deprived of liberty in the state of Mississippi or United States except by due process of law.

Mississippi Constitution Article 3 Section 14; United States Constitution 4<sup>th</sup> Amendment

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**WHETHER THE APPLICATION FOR LEAVE TO PROCEED  
INTO TRIAL COURT-WITH-MOTION FOR POST-CONVICTION  
FOR COLLATERAL RELIEF WAS SUCCESSIVE**

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Notwithstanding the clear and fully elaborated justification presented, the Mississippi Court of Appeals/Supreme Court states the “Application for Leave to Proceed Into Trial Court”-with-“Motion for Post-Conviction Collateral Relief” assigned cause number **2017-M-00681** is considered a “continuation” of the initially filed “Motion for Evidentiary Hearing” as it was assigned the identical cause number **2017-M-00681**.

Indigent Pro Se Petitioner Benitez asserts, the Mississippi Court of Appeals/Supreme Court cannot consider/suggest/imply/infer the submitted, filed, and docketed “Application for Leave to Proceed Into Trial Court”-with-“Motion for Post-Conviction Collateral Relief” as a successive filing.

The Mississippi Court of Appeals/Supreme Court precedence is well established to this fact as new filings by a Petitioner being submitted are to be assigned cause numbers in “succeeding order.” It was at the discretion of the Mississippi Court of Appeals/Supreme Court to assign the submitted “Application for Leave to Proceed Into Trial Court”-with-“Motion for Post-Conviction Collateral Relief” a new/retroactive cause number. Therefore, the Mississippi Court of Appeals/Supreme Court elected to exercise its full discretion in assigning the “Application for Leave to Proceed Into Trial Court”-with-“Motion for Post-Conviction Collateral Relief” the illustrated “retroactive” cause number **2017-M-00681**.

Never, in the history of the inherent authority of the State of Mississippi Court system or any other State or Federal Court system has a filing been assigned a retroactive cause number and considered a new filing. Such an act, in and of itself, destroys the very foundation in which the Mississippi State Legislature and the entire United States Legislature enact laws to uphold the very structure of a well-established judicial system.

To cut off Indigent Pro Se Petitioner Ruben Orlando Benitez from the right to proceed, is to cut off his access to the Court. This also, in and of itself, violates the Fundamental Constitutional rights of Indigent Pro Se Petitioner Benitez:

“Among the rights recognized by the Court as being fundamental are the rights to be free from invidious racial discrimination, to marry, to practice their religion, to communicate with free persons, to have due process in disciplinary proceedings, and to be free from cruel and unusual punishment. As a result of the recognition of these and other rights, the right of access to courts, which is necessary to vindicate all constitutional rights, also became a fundamental right”.

Joseph T. Luken, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court-It May Be Effective, but Is It Constitutional?*, 70 *Temp. L. Rev.* 471, 474-75 (1997)

The Supreme Court of the United States cannot allow the Mississippi Court of Appeals/Supreme Court, with all its inherit authority, to alter, disavow, manipulate, or justify a clear and ubiquitous defiance.

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## CONCLUSION

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Wherefore premises considered, Indigent Pro Se Petitioner Ruben Orlando Benitez, filing this “Writ of Certiorari” without the benefit of counsel, seeks for the Supreme Court of the United States to grant this submitted “Writ of Certiorari.” Thus ordering the Mississippi Supreme Court to grant the filed “Application for Leave to Proceed Into Trial Court”-with- “Motion for Post-Conviction Collateral Relief” as the

Mississippi Court of Appeals/Supreme Court has unequivocally  
acknowledged and ruled definitively based on the following precedence:

“Neither the common law nor our own Constitutional law applies  
the doctrine of res judicata to Constitutional claims.”

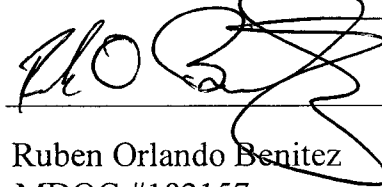
*Smith v. State, 149 So. 3d 1027, 1032 (Miss 2014)*

The United States Supreme Court has also acknowledged and  
definitively presaged against the denial of Constitutional rights in regards to  
Indigent Pro Se Petitioner Ruben Orlando Benitez;

“In closing its doors today to another indigent litigant, the  
Court moves ever closer to the day when it leaves an indigent  
litigant with a meritorious claim out in the cold. And with each  
barrier that it places in the way of indigent litigants, and with  
each instance in which it castigates such litigants...the Court  
can only reinforce in the hearts and minds of our society’s less  
fortunate members the unsettling message that their pleas are  
not welcome here.”

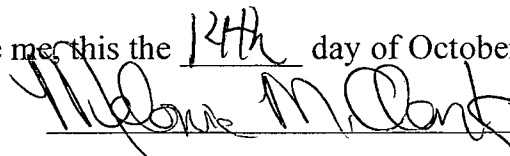
*In re Demos, 500 U.S 16, 19, 111 S. Ct. 1569, 1571, 114 L. Ed. 2d 20  
(1991) (Marshall, J.)*

Very Respectfully Submitted,



Ruben Orlando Benitez  
MDOC #182157

Sworn to and subscribed before me, this the 14th day of October, 2021



Notary

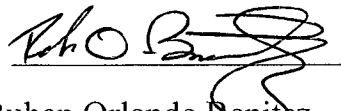


**CERTIFICATE OF SERVICE**

I Indigent Pro Se Petitioner, Ruben Orlando Benitez, do hereby certify that I have this day, caused to be mailed by MDOC ILAP, this "Writ of Certiorari" attached, by U.S. mail postage prepaid true and correct copies of the foregoing instrument to the following:

Honorable Clerk of the Court  
United States Supreme Court  
1 First Avenue  
Washington, D.C 20543

Done this the 14<sup>th</sup> day of October, 2021

  
Ruben Orlando Benitez  
MDOC # 182157  
S.M.C.I.  
Bldg. D-1 B-zone Bed 194  
P. O. Box 1419  
Leakesville, MS 39451