Case No# 21-6698

ORIGINAL

IN THE SUPREME COURT

OF THE UNITED STATES

IN RE: CARLTON WEST II (Petitioner)

ON PETITION FOR A EXTRAORDINARY WRIT TO

THE UNITED STATES COURT OF APPEALS

FOR THE 6TH CIRCUIT

PETITION FOR A EXTRAORDINARY WRIT (Writ of Habeas Corpus)

SUPREME COURT RULE 20 et. als.

Carlton West II #A-237293

Baraga Correctional Facilty

13924 Wadaga Road-Level 5

Baraga, Michigan 49908

ph# 906-275-5100

QUESTIONS PRESENTED

QUESTION #1

EXACTLY HOW, WHEN AND WHERE ARE PRISONERS TO USE THE NEW EQUITABLE RULE ANNOUNCED IN MARTINEZ V. RYAN 566 U.S. 1 (2012) AND TREVINO V. THALER 569 U.S. 413 (2013)?

QUESTION #2

DOES THE FACTS OF MY CASE QUALIFY FOR THE NEW EQUITABLE RULE OF MARTINEZ V. RYAN, SUPRA AND TREVINO V. THALER, SUPRA?

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LIST OF PARTIES

All parties do not appear in the cation of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of the petition is as follows:

CARLTONE WEST II, (Petitioner)

THE PEOPLE OF THE STATE OF MICHIGAN, (Respondent)

KRISTOPHER TASKILLA (Warden), (Respondent)

ANDREA M. CHRISTIENSEN-BROWN (Attorney General), (Respondent)

RELATED CASES

People v. West II, #175678 Michigan court of appeals, judgement entered September 17,1996 (Appendix E).

People v. West II, #107723 Supreme court of Michigan judgement entered July 25, 1997 (Appendix F.).

West II v. Withrow, #1:98-cv-557 U.S. district court for the western district of Michigan southern division, judgement entered March 19th 2001 ix [redacted]). (appendix H.)

People v. West II #93-49579-FC, 7th judicial circuit court judgement entered March 19, 2008 (Appendix J.).

People v. West II, #93-49579-FC, 7th judicial circuit court judgement entered March 19th 2009 (Appendix K.).

People v. West II #290929, Michigan court of appeal judgment entered June 23 2009 (Appendix L.).

People v. West II, #139497 Supreme court of Michigan judgement entered January 29 2010 (Appendix M.).

In Re Carlton West II, #10-1320 U.S. court of appeals 6th circuit judgement entered August 11, 2011 (Appendix I.).

In Re Carlton West II, #17-7818 Supreme court of the united states judgement entered March 19, 2018 (Appendix N.).

In Re Carlton West II, #17-7818 Supreme court of the united states judgement entered March 25, 2019 (Appendix C,). West II v. Withrow, #1:98-cv-557 U.S. district court western district of Michigan southern division judgement entered October 22, 2020 (Appendix B,)

In Re Carlton West II #20-2078, U.S. court of aapeal 6th circuit judgement entered May,17 2021 (Appendix A,)

In Re Carlton West II, #20-2078 U.S. court of appeals 6th circuit judgement entered July 7, 2021 (Appendix D,).

In Re Carlton West II #20-2078 U.S. court of appeals 6th circuit judgement entered August 18, 2021 (Appendix D,).

In Re Carlton West II #20-2078 U.S. Court of appeals 6th circuit judgment entered August 24, 2021 (Appendix D,).

In Re Carlton West II, #20-2078 U.S. court of appeal 6th circuit judgement entered October 1, 20121 (Appendix D,).

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OTHER

THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A EXTRAORDINARY WRIT

Petitioner respectfully prays that a extraordinary writ issue to review the judgement below.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals at appendix A to the petition and is

[✓] reported at ✓ ; or 2021 U.S. Appeals Lexis 14661

[ ] 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 designed for publication but is yet report; 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 designed for publication but is 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 unpubished

JURISDICTION

[✓] For cases from federal courts:

The date on which the United States court of appeals decided my case was 05/17/2021

[ ] No petition for rehearing was timely filed in my case.

[✓] a timely petition for rehearing was denied by the United States court of appeal on the following date 10/01/21 and a copy of the order denying rehearing appears at appendix D. (10/01/2021).

[ ] an extension of time to file the petition for a writ of certiorari was granted to and including ____ on ____ in Application No# A

The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment; No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in land or navel 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 offence 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 process of law; nor shall private property be taken for public use, without just compensation.

6th Amendment; In all criminal prosecution 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 cause and nature 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 defence.

14th Amendment; Section 1. All persons born or naturalized in the united states, and subject to the jurisdiction thereof, are citizens of the united states and of the states 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 any person within it's jurisdiction the equal protection of laws.

STATEMENT OF THE CASE

Prior to this court's 2012 holding in Martinez v. Ryan supra, I argued in 2008 via M.C.R. 6.500 et. seq., in the 7th Judicial Circuit Court of Genesee County Flint, Michigan, the same arguments in this court, in Martinez, said is actionable i.e. "on my very first appeal, my appellate counsel was ineffective because he did not order all of my lower court records, instead he only ordered my trial transcripts, thus, my very first appeal was constructed strictly from my trial transcripts instead of from my police report, pre-trial and trial transcripts, which collectively and readily illustrates my trial counsels ineffectiveness in allowing polygraphist James Harris to use fabricated statements against me, statements which came from a polygraph test that my trial counsel arranged for me to take (while my trail counsel himself did not attend the polygraph test), my trial counsel further allowed Michigan to use this fabricated statement to convict me.

After this Courts 2012 holding in Martinez and its 2013 holding in Trevino v. Thaler supra., I argued via F.R. CIV. P. RULE 60 (B)(6) in the U.S. District court for the western district of Michigan southern division, this same argument again, this time relying on this courts holding in Martinez and Trevino, however, the district court, without warning recharacterized my motion into a request to file a second successive habeas corpus, then transferred such to the U.S. District court of appeals for the 6th circuit, where my motion was denied. (Appendix A.), reconsidered (Appendix D.), then denied again (Appendix D.) under the rules of a second successive petition instead of under the new rule of Martinez and Trevino in conjunction with Rule 60 (B)(6).

Which brings me back to this court, to have this court either answer the questions of; #1) exactly how, when, and where are prisoners to use the new equitable rule announced in Martinez and Trevino; and #2) does the facts of my case qualify for the new equitable rule announced in Martinez and Trevino?; or to send my case back down to the U.S. District court of the western Michigan southern district of the U.S. court of appeals 6th circuit with instructions for either of these courts to rule on the merits thereof under the holdings of Martinez and Trevino.

REASONS FOR GRANTING THE PETITION

The compelling reasons that exist are: the state of Michigan confessing error in their "Peoples Brief on Appeal" at pages 2-3, i.e.,

"Defendant did not register an objection at vol#1 page 61...he does not claim that he made an objection at anytime during trial...even so...reversal is not required simply because an opening statement refers to evidence (statements from a polygraph test) which later proves to be inadmissible."

Michigan confessing to error is both extraordinary circumstances and compelling reasons sufficient enough for this court to grant the petition. This compelling reason imposes a duty on the reviewing court to arrive at the same conclusion that this court arrived at in Buck v. Davis supra.

The facts of my case presents issues; both of ineffective assistance of counsel under Strickland and an entitlement to relief under Rule 60 (B)(6) that deserves encouragement to proceed further.

These compelling reasons puts reviewing courts under obligation to separate the objectively reasonable wheat from the clearly unconstitutional chaff, hence, rule on the merits of my case. see, "The Posnerian Harvest: Separating wheat from chaff" 86 Yale L.J. 974 at 988 (1977).

REASONS FOR GRANTING THE PETITION

The national importance of deciding the questions are: just as this court qualified Coleman with it's holding in Martinez this court must now qualify Martinez so all clerks of the lower federal courts won't be able to use this courts Rule 60 holdings (i.e., Gonzalez v. Crosby 545 U.S. 524 (2005)) alone to dismiss prisoners motions, when those motions are relying on Martinez and Rule 60 (B)(6) of Buck v. Davis supra, 137 S.Ct at 780.

Deciding the questions will eliminate any/all confusion among the lower federal court as to the course of action to take when presented with the Martinez-Trevino issue, thus establishing

uniformity amongst the lower federal courts.

Just as the lower federal courts are required to perform screening of prisoners 1983 civil suits because of the P.L.R.A., so to must federal courts perform a screening specially geared for dealing with prisoners who believe the facts of their case satisfy the test of Martinez-Trevino.

A prisoners inability to present an ineffective assistance claim is of particular concern because the right to effective trial counsel is a bedrock principle in our nation's justice system, 566 U.S. at 2-3, hence, of national importance.

What needs to be clarified by this court is the holding of Martinez-Trevino juxtaposed with Gonzalez v. Crosby 545 U.S. 524 at 532 (2005) and Moreland v. Robinson 813 F.3d 315 at 322-23 (2016) (The supreme court instructs us to construe a Rule 60 (B) motion as successive habeas petition if it seeks to add a new ground for relief".)

REASONS FOR GRANTING THE PETITION

The decision of the U.S. Court of appeals 6th circuit, in my case, was erroneous in the following ways; in Martinez v. Ryan 680 F.3d. 1160 (2012) the U.S. court of appeals 9th circuit said:

"Pursuant to the opinion of the supreme court in Martinez v. Ryan, 566 U.S. 1 (2012) inadequate assistance of counsel during initial review collateral proceedings may now establish cause for a prisoners default of a claim of I.A.T.C.. The district court properly applied the law as it stood at the time of Martinez's petition. However, by qualifying Coleman v. Thomas, 501 U.S. 722 (1991) the supreme court changed the law, therefore, the district court's denial of Martinez's petition for habeas corpus on the basis that his claim was procedurally defaulted is reversed, and the matter is remanded for proceedings consistent with the supreme courts opinion."

Thus, at the outset, the district court was wrong for transferring my case to the U.S. court of appeals 6th circuit (see, Appendix B,) under Buck v. Davis supra,. (in the circumstances of this case, the district court abused its discretion in denying Buck's Rule 60 (B)(6) motion).

Martinez and its progeny all make the statement that..."a prisoner may obtain federal review...Martinez merely allows a federal court to consider the merits of a claim...it merely adjusted the equitable rules as to when a prisoner might avail him or herself of statutory federal

relief."

However, neither the district court nor the court of appeals 6th circuit gave me or my case the benefit or the opportunity to obtain federal review under Martinez, neither the district court nor the court of appeals 6th circuit ever considered the merits of my claim to see if my claim fit within the framework and would pass the test of Martinez. The decision of the 6th circuit was erroneous in recognizing that I was relying on Martinez but instead refused to remand my case for further proceedings consistent with Martinez.

REASONS FOR GRANTING THE PETITION

The decison of the U.S. court of appeals 6th circuit is in conflict with both decisions of this court, the U.S. court of appeals 9th circuit and decisions from within it's own circuit, i.e., "however, to protect prisoners with potentially legitimate ineffective assistance claims, it is necessary to recognize a narrow exception to the holdings of Coleman...566 U.S. at 2...a federal court can establish cause to excuse the procedural default"...id at 10..."in the 20 years since Coleman was decided, we have not held Coleman applies in circumstances like this one..id at 15-16" A.E D.P.A refers to attorney error in collateral proceedings, but it does not speak to the questions presented in this case"...id at 17"..."In this case...Martinez's grounds for relief is his ineffective assistance of trial counsel claims, a claim which A.E.D.P.A. does not bar. Martinez relies on the ineffectiveness of his post conviction attorney to excuse his failure to comply with Arizona's procedural rules, not as an independent basis for overturning his conviction"..id at 17-18 (2012).

"The supreme court changed the law, therefore, the district court's denial of Martinez's petition for habeas corpus...is reversed and the matter is remanded for proceedings consistent with the supreme court opinion." Martinez v. Ryan 680 F.3d 1160 (9th Cir.2012).

The 6th circuit has provided the following framework to evaluate claims under Martinez...as to these claims, the district court should determine...(1) whether state post conviction counsel was ineffective and (2) whether petitioner's claims of ineffective assistance of counsel were

"substantial" within the meaning of Martinez, Sutton, and Trevino. Questions; (1) and (2) determine whether there is cause. The next question is (3) whether petitioner can demonstrate prejudice. Finally, the last step is (4) if the district court concludes that petitioner establishes cause and prejudice as to any of his claims, the district court should evaluate such claims on the merits". Mitchell v. Rees, 2019 U.S. Dist. Lexus #104326 at 16. I was never given this benefit!

CONCLUSION

The petition for an extraordinary writ should be granted.

RESPECTFULLY SUBMITTED,

CARLTON WEST II #A-237293

/s/ Carlton West II

December 01, 2021

SUPREME COURT RULE 20 (1)

PETITION FOR AN EXTRAORDINARY WRIT

Showing that the writ will be in aid of the courts appellate jurisdiction, i.e., this court in Martinez v. Ryan 566 U.S. 1; 132 S.Ct. 1309; 182 L.Ed.2d 272 (2012), said "the A.E.D.P.A. of 1996 does not speak to the question of does the facts of a prisoners case fit within the narrow exception to Coleman v. Thomas 501 U.S. 722 (1991) which, if so would entitle the prisoner to have the federal court to hear his substantial claim of ineffective assistance of trial counsel because the prisoners appellate counsel was ineffective in the prisoners very first appeal."

This court futher said "a procedural default does not bar a federal habeas court from hearing such substantial claims of ineffective assistance at trial, if, in the very first appeal, there was no counsel or counsel in the very first appeal was ineffective" 566 U.S. at 17.

This court in Buck v. Davis 137 S.Ct. 759; 197 L.Ed.2d 1; 2017 U.S. Lexis 1429 (2017), "the district court abused it's discretion in denying Bucks Rule 60 (B) (6) motion, which was brought under the rules catchall category". This court further said "Buck cannot obtain relief unless Martinez and Trevino, not Coleman, would govern his case were it reopened, if they would not, his claim would remain unreviewable, and Rule 60 (B)(6) relief would be inappropriate". 137 S.Ct at 780 (2017).

This court, in Davilla v. Davis 137 S.Ct. 2058 (2017), said, citing Martinez, "equitable discretion [which all lower federal courts possess and should use] was exercised in view of the unique importance of protecting a defendants trial rights, particularly the right to effective assistance of trial counsel."

This court further said "of the 50 States, it's only 2 two which Martinez does not apply to, and 1 one which Trevino does not apply...see, Leo v. Cosini 777 F.3d. 46 at 60-61 (2015) (Martinez and Trevino does not apply to Massachusetts); Hennessy v. Bagley 766 F.3d 550 at 557 (2014) (Martinez does not apply to Ohio) id. at 2069.

Hence, Michigan is one of the 50 states to which Martinez and Trevino does apply, however, the

Rule 60 (B)(6) motion that I filed, relying on Martinez and Trevino, was without warning, recharacterized by the U.S. District Court Western District of the Southern Division, as a application for leave to file a second or successive §2254 Habeas Corpus (Appendix B,) and transferred to the 6th Circuit Court of Appeals (Appendix B,), and was thereafter denied 4 four times by the 6th Circuit Court of Appeals, i.e., Rule 60 (B)(6) denied (Appendix A,). My request for a certificate of appealability denied (Appendix D,). My request for a Rehearing/Rehearing En Boinc denied (Appendix D,), then granted (Appendix D,), then denied again (Appendix D,).

Thus, granting me an extraordinary writ, via answering the questions presented will be in aid of this Courts appellate jurisdiction to the extent of who, when, where, and exactly how the lower Federal Courts must entertain Rule 60 (B)(6) motions which rely on the holdings of Martinez and Trevino.

SUPREME COURT RULE 20 (1)

PETITION FOR AN EXTRAORDINARY WRIT

Showing that exceptional circumstances warrant the exercise of this courts discretionary powers, i.e., this court , in Buck v. Davis supra, said "the extraordinary nature of this case is confirmed by what the state itself did in response, Texas confessed error, the states response, the attorney generals public statement, the statement affirmed that it is inappropriate, the state confessed error, these were remarkable steps, it's not everyday that a state confesses error...but then again, these were as the state itself put it at oral argument here "extraordinary cases". The express recognition by a Texas attorney general that the relevant testimony was inappropriate, Buck has presented issues that 'deserve encouragement to proceed further'. (quoting, Miller-El 537 U.S. at 327); 137 S.Ct at 779.

Likewise, Michigan confessed error in my case, in response to my very first appeal. See, Peoples Brief on Appeal at page 2-3.

"Defendant did not register an objection at vol.1 page 61, he does not claim that he made an objection at anytime during trial...even so, reversal is not required simply because an opening

statement refers to evidence (statements defendant made at a polygraph test) which later proves inadmissible".

This court further found that because of the extraordinary circumstances, Buck presented issues that deserve encouragement to proceed further...and the issues worthy of review are Strickland v. Washington and Rule 60 (B)(6) type issues, 137 S.Ct at 780.

Likewise, my case presents issues that deserve encouragement to proceed further, i.e., trial counsel advised me to take a polygraph test, left me alone at such test, then allowed Michigan to use statements from such test to convict me. My appellate attorney never discovered or raised this issue in my very first appeal, hence all of this is exceptional circumstances.

SUPREME COURT RULE 20 (1)

PETITION FOR AN EXTRAORDINARY WRIT

Showing that adequate relief cannot be obtained in any other form or from any other court, i.e., I raised this same issue on March 14th 2008 when I filed a MCR 6.500 Motion for Relief from Judgement in Michigan's trial court (arguing: Argument#4 Ineffective assistance of appellate counsel-Due Diligence) when I argued, my appellate counsel simply did not fulfil his ministerial duties by not ordering all of my lower court records, he was not able to raise the issue of my trial counsel advising me to take a polygraph test, leaving me alone at such test, then allowing Michigan to use statements from such test to convict me.

Evidence of this exist in my police report and my preliminary examination transcripts, however, my appellate counsel only ordered my trial transcripts. The trial court denied my Motion For Relief from judgment March 19th 2008, saying "this court is not persuaded that defendant was denied effective assistance of counsel in trial or on appeal". (Appendix J.) Michigan court of appeals and the Supreme court of Michigan both followed suit with their denials (Appendix L. and M.), the U.S. District Court western district of Michigan southern division refused to entertain my Rule 60 (B)(6) motion (Appendix B.). The U.S. court of appeals 6th circuit refused to entertain my Rule 60 (B)(6) motion (Appendix A.).

III.

Instead those federal courts recharacterized my Rule 60 (B)(6) motion without warning, into a request for permission to file a second- successive habeas corpus, then denied my Rule 60 (B)(6) motion pursuant to the rules of §2254-A.E.D.P.A., instead of this court's holding in Martinez-Trevino and Rule 60 (B)(6) (Appendix A, and B,) because those federal courts put my case in the box of "§2254-A.E.D.P.A." to deny it, even the clerk of this court tried to tell me I couldn't seek justice from this court (Appendix C,).

Hence, adequate relief cannot be obtained be in any other form or from any other court; where else can I go aside from the court that issued the ruling which my case depends on, i.e., Martinez and Trevino, and their progeny. Furthermore, this court said "prisoners are not left entirely without a forum for airing their constitutional claims. The A.E.D.P.A. does not foreclose them from filing an original petition for habeas corpus with the Supreme Court of the U.S.", see, Felker v. Turpin 518 U.S. 651 at 654 (1996); see also, Supreme Court Rule 20 (4)(a). The supreme court can then choose whether to act on their petitions and grant such relief as it may find necessary, see, In Re Davis 557 U.S. 952 at 952 (2009).

SUPREME COURT RULE 20 (4)(a)

PETITION FOR AN EXTRAORDINARY WRIT

In compliance with the requirements of 28 U.S.C. §2241 POWER TO GRANT WRIT. (A) Writs of habeas corpus may be granted by the supreme court, any justice thereof...(B) the supreme court, any justice thereof, may decline to entertain on application for writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it. (C) The writ of habeas corpus should extend to me because (3) I am in custody in violation of the constitution of the United States i.e., the 5th Amendment privilege against self incrimination; the 6th Amendment right to effective assistance of counsel, and the 14th Amendment right to due process implied therein, and (5) It is necessary to bring me into court to testify and for trial.

SUPREME COURT RULE 20(4)(A)

PETITION FOR AN EXTRAORDINARY WRIT

In compliance with the requirements of 28 U.S.C. §2242 APPLICATION. This application for a writ of habeas corpus is typewritten, signed and verified by me /s/Braxton West II. This application alleges facts concerning my detention. The name of the person who has custody over me is Warden Kristopher Taskilla, by virtue of me having been found guilty of violating M.C.L 750.316(B) 1st degree murder and M.C.L. 750.227(B)(A) felony firearm, and thereafter being sentenced to life without parole plus 2 two years: L.W.O.P. in the Michigan Department of Corrections.

I reserve the right to amend or supplement this application as provided in the rules of procedure applicable to civil actions. I made application of this/the issues herein to the district court of the district in which I am being held. i.e. Rule 60 (B)(6) motion relying on Martinez v. Ryan supra. and Trevino v. Thaler supra.

"REASONS FOR NOT MAKING APPLICATION TO DISIRICT COURT"

I did make application to the district court I tried to show the U.S. District Court Western District of Michigan Southern Division that the facts of my case fit and pass the test of Martinez and Trevino (July 2020): that court immediately recharacterized my Rule 60 (B)(6) motion into a application for leave to file a second or successive §2254 habeas corpus, without informing me first before such recharacterization, and thereafter transformed/transgressed my Rule 60 (B)(6) motion to the 6th Circuit Court of Appeals (October 2020); (Appendix B.).

I then filed a "clarification" with that district court trying to show them that my Rule 60 (B)(6) motion presents a claim not previously raised that's sufficient to meet §2254 (B)(2) "new rule" provision, Gonzalez 545 U.S. 524 at 530 (2005) i.e., the facts of my case does fit the narrow exception to Coleman v. Thomas 501 U.S. 722 (1991) as announced in the retroactive change in U.S. Supreme Court case law of Martinez and Trevino, entitling me to have the district court to hear my substantial claim of ineffective assistance of trial counsel because my appellate counsel was ineffective in my very first appeal by not discovering and raising the fact that my

trial counsel advised me to take a polygraph test, after which, my trial counsel left me alone with the polygraph examiner, then allowed Michigan to use 'fabricated statements' from such polygraph test to convict me (October 2020); that district court issued an order instructing the clerk to 'reject the "clarification" and return such to me because my case is now closed' (November 2020); (Appendix C.).

SUPREME COURT RULE 20 (4)(A)

PETITION FOR AN EXTRAORDINARY WRIT

Setting out specifically how and where I exhausted available remedies in the state courts or otherwise comes within the provision of 28 U.S.C. §2254(B), i.e., March 14th 2008. I, pursuant to M.C.R. 6.500 et seq. filed a Motion for relief from judgement in Michigan's trial court raising the issues of "Argument#2, Ineffective Assistance of Counsel—Failure to adversarily test conflict of interest....Argument#4 Ineffective assistance of appellate counsel—Due diligence"; raising the same argument that I am raising now. March 19th 2008 Michigan's trial court denied this motion because:

"This court is not persuaded that defendant was denied effective assistance of counsel in trial or on appeal, defendant has made no showing that counsels performances were unreasonably deficient as required by Strickland v. Washington 466 U.S. 668 (1984) and People v. Reed 499 Mich 375 (1995), thus, defendant has not satisfied the court that his trial and appellate counsels were deficient in failing to raise the claims now set forth in defendants current motion." (Appendix 7).

March 10th 2009, I pursuant to M.C.R. 3.304 et seq, filed a habeas corpus to bring prisoner to testify or for prosecution Michigan's trial court. March 19th 2009 Michigan's trial court denied this motion because:

"Regardless of the title attached to it by defendant, it must be treated as if it was filed under M.C.R. 6.501; this court determines that the current motion is successive under M.C.R. 6.502 (G) and that an initial consideration under M.C.R. 6.504(B) will not be done by this court."

Synchronically, March 10th 2009, I filed an application for leave to appeal in the Michigan court of appeals. June 23rd 2009, Michigan's court of appeals denied this motion because:

"Defendant has failed to meet the burden of establishing entitlement to relief under M.C.R

6.508(D)". (Appendix L.).

June 23rd 2009, I filed a Motion for Reconsideration in the Michigan court of appeals. July 21st 2009, Michigan court of appeals returned such motion as being 'filed untimely'. August 20th 2009, I filed a Application for leave to Appeal in the Michigan Supreme court. January 29th 2010 Michigan's supreme court denied this motion because "defendant has failed to meet the burden of establishing entitlement to relief under M.C.R. 6.508(D)". (Appendix M.).

Thus, the last court to deal with the merits of the issues now being raised (Michigan's Trial Court) resulted in a decision that was both contrary to and an unreasonable application of Strickland v. Washington supra., clearly established federal law as was determined by this court. Furthermore, Michigan's practice of 'rubber stamping denials' (Appendix L. and M.) renders its States corrective process absent and ineffective to protect my rights under 28 U.S.C.§2254(B) et al.