No. 21-6764

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
DEC 07 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Inre Eric Denorris Kennedy — PETITIONER
(Your Name)

vs.

____________________ — RESPONDENT(S)

EXTRAORDINARY WRIT
ON PETITION FOR A WRIT OF [redacted]
HABEAS CORPUS 28 U.S.C.A §2254(a)

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

PETITION FOR WRIT OF ~~CERTIORARI~~
HABEAS CORPUS

Eric Denorris Kennedy
(Your Name)

Mississippi State Penetentiary
Unit 30-B-Building
(Address)

Parchman, MS 38738
(City, State, Zip Code)

____
(Phone Number)

QUESTION(S) PRESENTED

1.

Whether the applicant's Successive Habeas Corpus petition satisfied the requirement of Sections §§ 2244, § 2253; and § 2254.

2.

Whether state sentencing statutes MCA §§ 97-3-21 and § 47-7-3 circa 1997-1998 is void for vagueness in violation of the applicants 5th U.S.A. U.S.C.A., right to notice in language common to a person of ordinary intelligence, that infringed on his right to be legally sentenced. 5th U.S.C.A. Johnson v. United States 576 U.S. 591 (2015); Kolender v. Lawson 461 U.S. 352, 357-358, 103 S.Ct. 1855, 75 L.Ed.2d 903; Fay v. Noia 372 U.S. 391 (1963).

3.

Whether the appellate court fact-finding process concerning the applicant's Actual Innocence claim, Brady violation for suppression of motion for phone records, Involuntary Plea and Ineffective assistance of Counsel claim materially deficient for the facts if viewed in light of the evidences would show but for constitutional error, a reasonable juror would find the applicant's guilt debateable. 28 U.S.C.A. §§ 2244(2)(B)(i)(ii).

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:

Lynn Fitch - Attorney General - Mississippi
P.O. Box 220
Jackson, MS 39205-0220

RELATED CASES

Kennedy v. Cain (5th Circuit) No. 20-60758
Kennedy v. Taylor/Cain (U.S.D.C) No. 3:20-CV-78
Kennedy v. State of Mississippi (MS S.Ct) No. 2016-CT-00755-SCT
Kennedy v. State of Mississippi (MS. Ct. App.) No. 2016-CT-00755-COA
Kennedy v. State of Mississippi (Hinds County Mississippi Circuit Court) No. 25H3-1054-CIV

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IN THE

SUPREME COURT OF THE UNITED STATES

Extraordinary PETITION FOR WRIT OF ~~CERTIORARI~~ Habeas Corpus

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 B to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D 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 Mississippi Court of Appeals court appears at Appendix C to the petition and is

[✓] reported at 287 So. 3d 258 (Miss. 2019); 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 9/27/21.

[ ] 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: August 23, 2021, and a copy of the order denying rehearing appears at Appendix A1.

[ ] 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)~~.

Article 3 of the Constitution
28 U.S.C. § 2254 (a)
Supreme Court Rule 20(4)(a)

[✓] For cases from **state courts**: MS. S. Ct.

The date on which the highest state court decided my case was 10/17/2019. A copy of that decision appears at Appendix D.

[ ] 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)~~.

Article 3 of the Constitution
28 U.S.C. § 2254 (a)
Supreme Court Rule 20(4)(a)

Jurisdictional Statement

Pursuant to Supreme Court Rule 10(a)(b) and (c); the Fifth Circuit Court of Appeals, the District Court, and State Court has decided an important federal question that conflicted with the decisions in the 5th and 14th Amendments of the United States Constitution.

1. Exhibit A4 shows that Applicant raised a constitutional challenge to a state law under the 5th U.S.C.A.

2. Exhibit "Aii" shows that 5th Circuit implimented 30 day extensions to deadlines, but denied the applicant an automatic extension to file his Notice of Appeal.

3. Exhibit "B2" shows that the last order entered by the District Court denying his Certificate of Appeallibility was entered on November 9, 2020, after the Appellant's filing of his August 17, 2020 N.O.A.

4. Exhibit "A6" & "A7" shows that the District Court Closed the Case before the 5th Circuit issued an order denying his Motion For Authorization. And that Notice of Appeal is dated March 02, 2020. But filed 8/17/20

5. Exhibits E & F shows that law of case doctrine pursuant to El Bradrawi v. U.S. 787 F. Supp. 2d 204 (D. Com. 2011), concerning the Applicant's permission to

proceed "informa pauperis" was not followed by the District Court nor the 5th Circuit.

6. Exhibit "A8" shows the applicant desire to appeal but proceeded in the wrong forum by petition for rehearing en banc, which the 5th Circuit could have construed it as a Notice of Appeal timely filed but did not extend that exception to the Applicant.

7. Exhibit "A9-10", shows that a third order which is the last order entered by the District Court on 12/9/20 denying applicant's C.O.A., after the applicant's August 17, 2020 (dated March 2, 2020) was filed. Showing that the applicant's N.O.A., was timely since the District Court was still entertaining motions filed in their jurisdiction.

This case poses a serious liberty interest involving the 5th Amendment right to Notice in language common to people of ordinary intelligence. Which is an organic fundamental right.

The applicant exhausted every remedy that was availible giving every court of Jurisdiction to res judicate the issues he presented therein.

Therefore with no other option availible he prays that this Court under 28 U.S.C.A. § 2254(a) exercise it's discretionary authority and hear this matter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution
14th Amendment of the U.S. Constitution
28 U.S.C. §§ 2244, § 2253, and § 2254
Mississippi Code Annotated § 97-3-21 circa 1991-1994
M.C.A. § 47-7-3 circa 1991-1994
MCA § 97-3-21 circa 1997-1998
MCA § 47-7-3 circa 1997-1998

STATEMENT OF THE CASE

In 1997, a Hinds County grand jury indicted Eric Denorris Kennedy and Nakiea Sutton for Capital murder, in violation of MCA 97-3-19 (2) (Rev. 1994), stemming from the burglary and subsequent murder of Thomas Ward.

On June 10, 1998, Kennedy entered a plea of guilty to the lesser-included offense of murder. The resulting sentence was life.

In 1998 Kennedy filed 1st PCR. Amended it in 2001. Denied in 2002.

In 2013 Filed 2nd PCR. Denied on 2015

In 2016 State Appellate Court Denied Appeal

In 2019 Motion for Rehearing Denied.

In 2019 State Supreme Court denied Writ of Cert.

In 2020 District Court transferred Case to 5th Cir.

In 2020 5th Cir denied Motion for Authorization

In 2020 District Court denied §2254 Petition

In 2021 5th Cir denied C.O.A.

In 2021 5th Cir denied Panel Rehearing/Motion for Reconsideration.

NOTE

The Applicant is bringing forth a Constitutional Challenge to A State Law. Exhibit A4. In Violation of the 5th U.S.C. Amendment.

REASONS FOR GRANTING THE PETITION

Question
1.

Whether the applicant's successive Habeas Corpus petition satisfied the requirements of Sections §§ 2244, §2253, and §2254.?

Standards

HN1; A movant must over-come the gate-keeping provisions and make a prima facie showing that his application presents a claim that relies on a new rule of constitutional law, made retroactive by the supreme Court or presents facts that could have not been discovered previously and tend to show actual innocence. Keith v. Bobby 551 F.3d 555 (2009), 28 U.S.C.A. §§ 2244, § 2254(2)(A)(i).

HN2; A federal court is relieved of AEDPA deference under §2254 when a state court's adjudication of a claim resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in the state Court proceeding. Hibbler v. Benedetti 693 F.3d 1140 (C.A. 9 2010). 28 U.S.C.A. §2254

HN3, Requirements under the AEDPA to entitle a movant to a Evidentiary Hearing are; (1); Facts if proved true are in the record and, (2); if state courts never considered claims in a full and fair hearing. Davis v. Lambert, 388 F.3d 1052 (C.A. 7 2004), Byran v. Mullin 335 F.3d 1207 (C.A. 10 2003) 28 U.S.C.A. § 2254.

HN4; Review is de novo where there has been no clear adjudication on the merits. Green v. Johnson 116 F.3d 1115, 1121 (5th Cir. 1997); Nobles v. Johnson 127 F.3d 409, 416 (5th Cir. 1997).

The applicant provided evidences that his 5th U.S.C.A. right to notice was violated and that he is actually innocent that jurists of reason would find debateable HN1, HN2, HN3, and HN4.

These evidences were affidavits of Sutton Exhibit U1-2, who swore under penalty of perjury that applicant had no involvement in the murder of T.C. Ward.

A detective statement of Roberta Terril who had given the whereabouts of the applicant on the night of crime Exhibit V. Terrill statement and the autopsy report, along with the phone record that the State suppressed Exhibits W & X, would undoubtely prove that the applicant is actually innocent.

The applicant further provided statements of Younger and Webster, Exhibits Y & Z, who on the night of the crime identified by name other suspects leaving the scene that was not the applicant.

Considering that the state did not have no D.N.A., blood-samples, finger-prints etc; tyeing the applicant to the murder, pursuant to Hayes v. Battaglia 403 F.3d 935 (C.A. 7 2005) citing Schlup v. Delo, 115 S.Ct. 851 (1995), the applicant clearly demonstrated actual innocence.

The Mississippi Court of Appeals judge noted those evidences in the record and acknowledge that she did not see the lower Court holding an evidentiary hearing on his mother's affidavit. Also unnoticed that applicant was indigent and incarcerated and therefore could not obtain other evidences except by petition to the courts. So his reliance was on hisself. Therefore under Miller v. Johnson 200 F.3d 274 (C.A. 5 2000), he was denied a fair evidentiary hearing.

Concerning his constitutional challenge to a state law, alleging that §§97-3-21 and §47-7-3 violated his right under the U.S.C. 5th amendment right to notice, the Mississippi Court of Appeals Judge Carlton misaprehended the ground.

Judge Carlton stated in Exhibit C2, that the applicant claimed he was illegally denied parole. He did not claim that. The applicant specifically alleged that his 5th amendment right to notice of what is permitted and prohibited (Parole eligibility), in language common to a person of ordinary intelligence infringed on his right to be legally sentence. See Kolender, Johnson, and Fay. U.S.C.A 5th and 14th amendments.

He asked for the same deference that the State Court awarded in the Stevenson, Patterson, and Lanier cases, because §97-3-21 1st clause was written the same exact way before and after 1995. And their court held that their natural life sentences were unenforceable because life without parole was not an option. And the SCOTUS held in Williams v. Taylor 120 S.Ct. 1495, "if a court refuses to extend a principle to a context in which it should apply is an unreasonable application of SCOTUS Law."

The MS District Court and 5th Circuit Court of Appeals also refused to extend the principle applied in Johnson v. U.S. 576 U.S. 591(2015) to the applicants case, when they both stated the applicant failed to show how Johnson is retroactively applied to his case when it is obvious that at part 2(II) of Johnson it is plain, "these principals apply not only to statutes defining elements of crimes, but to statutes fixing sentences."

The applicant brought a constitutional challenge to a state law sentencing statute. Statutes §§ 97-3-21 and § 47-7-3 are statutes fixing the sentence the applicant is under, and therefore Johnson should be applied to his case retroactively. In U.S. v. Sturgis 869 F.2d 544, 56(2d Cir. 1989) and Schiro v. Landrigan 127 S. Ct. 1933(2007), "§2254 do not bar evidentiary hearing when the state court fact-finding process was materially deficient." This should also hold true for the 5th Circuit Court of Appeals.

Either way, under the AEDPA's prima facie requirements the applicant was at the least entitled to an evidentiary pursuant to sections §§2244, §2253, & §2254 Satterfield v. Johnson 127 S.Ct. 198 (C.A. Pa 3 2006) Habeas Corpus 841. 28 U.S.C.A. §2253. Because the right to be legally sentenced is guaranteed by the 14th U.S.C.A.

Question 2

Whether state sentencing statutes MCA §§ 97-3-21 and § 47-7-3 circa 1997-1998 is void for vagueness in violation of the applicant's 5th U.S.A. U.S.C.A. right to notice in language common to a person of ordinary intelligence, that infringed on his right to be legally sentenced. 5th U.S.C.A., Johnson v. United States 576 U.S. 591(2015); Kolender v. Lawson 461 U.S. 352-358, 103 S.Ct. 1855, 75 L.Ed. 3d 903(1983), Fay v. Noia 372 U.S. 391(1963).

Standards

HN5 "The Fifth Amendment provides that; 'no person shall be deprived of life, liberty, or property, without due process of law.' Our cases establish that the Government violates this guarantee by taking away someone's Life, Liberty, or Property under a Criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes or so standardless that it invites Arbitrary enforcement." Kolender v. Lawson 103 S.Ct. 1855(1983

HN6 Sentencing guidelines could be subject to

Fifth Amendment due process vagueness challenges. 5th Amendment Due Process Clause Constitutional Law 4709; Sentencing and Punishment 658.

HN7 These principals apply not only to statutes defining elements of crimes, but also to statutes fixing sentences. Johnson v. United States 576 U.S. 591 (2015); U.S. v. Batchelder 99 S.Ct. 2198 (1979)

HN8 The imposition of an illegal sentence results when the punishment does not conform to the applicable penalty statute. Fay v. Noia 372 U.S. 391 (1963), 14th Amendment U.S.C.

The State of Mississippi Sentencing statutes MCA §§ 97-3-21 and § 47-7-3 circa 1997-1998 in the following cases will prove that these statutes are vague, over-broad, and ambigious. That the Mississippi department of corrections released over 3,000 inmates who was convicted and sentenced after 1995 validating that those statutes was not worded with definiteness. That the Mississippi Supreme Court admitted in a case that Legislature did not clarify the parole criteria in the statute. The Mississippi Court of Appeals gave 3 separate meanings to the parole language in the statutes validating there was guess-work involved in interpreting the statutes. That the statutes on their face shows ambiguity. And finally since the 1st sentence of §97-3-21 was written the same way before and after 1994 by case law will show that the applicant was not given the same deference as other inmates that was sentenced under a like premises in violation of his 5th and 14th right of due process. HN 5, 6, 7, and 8.

The Mississippi Court of Appeals judge on page 6 of exhibit C2, undermined the applicant's claim by stating that the applicant claimed the statutes was vague because he was entitled to parole. That is an abuse of discretion pursuant to Sharp v. Rohling 793 F.3d 1216 (C.A. 10 2015). "An unreasonable court decision is where the state court plainly misapprehend or mistate the record in making their findings, and the misapprehension can fatally undermine the fact-finding process, rending the resulting factual finding unreasonable." The applicant specifically claim that the

Statutes are voided for vagueness that infringed on his right to be legally sentence. Exhibits H1-3, are pages from his PCR petition, and his brief to the MS court of appeals proving that Judge Carlton did not address the applicant's ground the way he presented. And in Goudy v. Bassinger, 604 F.3d 394 (C.A. 7 2010) mentioned in the text of 28 U.S.C § §2254(d)(2), "A state court unreasonably applies federal law if it identifies the correct legal principal but unreasonably applies it to the facts of the case, or if it unreasonably refuses to extend a principal to a context in which it should apply." Not only did MS Court of Appeals Judge Carlton diverted the ground he alleged, but she also did the same thing to the Higginbotham case when he alleged the statutes are void for vagueness proving there is prejudice involved. Especially when the MS District Court and Fifth Circuit Appeallate court said that the applicant failed to show how Johnson applied to his case retroactively when under part II head notes of Johnson literally states, "These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences." And neither court extended the principle of the statute void for vagueness set forth in Kolender and the tests. Because the applicant took a guilty plea; U.S. v. Sturgis 869 F.2d 544, 56 (2nd Cir 1989); U.S. v. Skinner, 25 F.3d 1314, 1317 (6th Cir. 1994); and Menna v. N.Y., 423 U.S. 61, 63 (1975), all have stated that, "a guilty plea does not waive the right to challenge the constitutionality of a statute under which one is charged," and in State ex rel Hood v. Louisville Tire Center Inc 55 So.3d 1068 (2011) "trial court must carefully review all the evidentiary matters in the light most favorable to the moving party." The applicant (the moving party) obviously showed that a fortiori existed and yet despite the pecking-order of court-made-laws the SCOTUS being the first, the lower courts did not do what the constitution binded them to, a verbis legis non est recendendum. And that is to test MCA §§ 97-3-21 and § 47-7-3 circa 1997-1998 for vagueness and ambiguity. See Village of Hoffman Estates v. Flipside 102 S.Ct. 1186 (1982)

MCA § 97-3-21 circa 1998 was written the same way before and after 1994. One section with 2 independent clauses for murder and capital murder. See exhibits L & M. Before 1994 there was no words in the statute that made a provision for life with or without parole.

By the time Patterson v. State 660 So. 2d 966 (1995), Lanier v. State 635 So. 2d 813 (1994), Stevenson v. State 674 So. 2d 501, 506 (1996), and Sibley v. State 877 So. 2d 541 (2004); all of these men was convicted of murder or capital murder under the previous §97-3-21 law, and received natural life sentences. Except for Sibley who received a 40 year sentence for murder, but on review the Court ruled that Patterson, Lanier, and Stevenson could not be sentenced to natural life sentences because the statute did not provide for a sentence of life without. And upon remand they were all given parole, reasoning that since the statute did not provide a life without parole option the only sentence they could receive is life with parole. Note that in both versions of §97-3-21 on the simple murder clause there is no difference.

The applicant was sentenced to simple murder. See transcript excerpts I. It did not provide a life without parole option, and therefore the courts was obligated to afford the applicant the same deferential treatment as it did the aforementioned inmates, by extending the same principle that one cannot be sentenced to a provision that is not in the statute. But Judge Carlton deflecting the claim to residual law

§47-7-3 circa 1997-1998 insisted that §47-7-3 circa 1995 eliminated parole for murder- But her analysis of §47-7-3 is a court made rule that violated the 5th and 14th amendment right of the constitution, because it is very obvious a fortiori existed on the face, in the language of §47-7-3 1997-1998 statute, validating that the statutes are ambigious.

The first sign that §47-7-3 circa 1997-1998 is ambigious at paragraph 9 of Higginbotham v. State, 114 So. 3d 9 (2012) states, "Section 97-3-21 states that upon conviction for murder, a life sentence will be imposed. Section 97-3-21 references parole eligibility when addressing parole for murder. However, section 47-7-3(1)(f) prohibits parole eligibility for persons convicted of both murder and capital murder murder. The Legislature has yet to amend section 97-3-21 to clarify this point." No it did not, for it reads, "No person shall be eligible for parole who is charged, tried, and convicted and sentenced to life imprisonment under the provisions of Section §99-19-101." That is the capital murder sentence scheme for one, and for two §97-3-21 did not mention at the first clause any reference to section §47-7-3. So it is obvious that Judge Carlton prejudices is causing her to abuse her discretion by ascribing provisions to inmates that is not sentenced under them. But for the sake of an arguement she did ascribe section § 47-7-3(g) to the applicant that eliminates parole for every inmate who is convicted after June 30, 1995, but that is why the statute is ambigious.

Section §47-7-3(g) circa 1998 say no one who is convicted or suspended sentence revoked after June 30, 1995 shall be eligible for parole. But § 47-7-3(c), which do not have a specific crime, or date states "No one shall be eligible for parole until he shall have served ... (1) year of his sentence or sentences when his sentence or sentences is more than (5) years." Exhibit N-0. That is ambiguity all day.

If statutes are to be worded in language common to a person of ordinary intelligence, it would be common sense that anyone would elect to serve (1) year on a life sentence than a natural life sentence. But § 47-7-3 being written as it is, it is common sense that some guess-work is taking place, which guessing also invalidates a statute, and the next few cases will prove that there was guessing on the application of §47-7-3.

In 2010 the court said in Parker v. State 30 So. 3d 1222 (miss. 2010), "The court of appeals interpretation of section § 47-7-3 is incorrect because the statute does not abolish parole." According to § 47-7-3 (c) it does not, but § 47-7-3 (g) does. Sounds like guessing.

The mississippi Department of Corrections guessed wronged over 3,000 times. In the case Sinko v. State 192 So. 3d (Miss. 2016), has shown that M.D.O.C. paroled over 3,000 inmates after 2011. And when M.D.O.C. found out their error, reclassed only 800 inmates as ineligible for parole. The point is if M.D.O.C., did not understand with definiteness for nineteen years from 1995 to 2014 the application of § 47-7-3, then how could an 8th grade drop-out know with certainty that parole was permitted or prohibited in language common to his intelligence.

So by the rule leinty the applicant was supposed to receive the same deferential treatment as Lanier, Patterson, and Stevenson because he could not be sentenced to a provision not in the statute. But because he was his right under the U.S.C. 14th amendment to be legally sentenced was violated, due to sentencing statutes MCA §§ 97-3-21 and § 47-7-3 circa 1997-1998 5th U.S.C. amendment prohibition against vague and indefinite statutes.

Question "3"

Whether the appellate court fact-finding process concerning the applicant's Actual Innocence Claim, Brady violation for Suppression of 'Motion for phone records', Involuntary Plea and Ineffective Assistance of Counsel Claim, materially deficient for the facts if viewed in light of the evidences would show but for Constitutional error a reasonable juror would find the applicant's guilt debateable. 28 U.S.C.A. §§ 2244(2)(B)(i)(ii).

Standards

HN9 Review is de novo where there has been no clear adjudication on the merits. Miller v. Johnson 200 F.3d 274 (C.A. 5 2000)

HN10 The court abuses it's discretion by erroneously interpreting a law. United States v. Beltran Guiterrez 19 F.3d 1287, 1289 (9th Cir. 1994)

HN 11 The requirements under the AEDPA to entitle a movant to an Evidentiary Hearing are; (1) facts if proved true are in the record and; (2) if state courts' never considered claims in a full and fair hearing. Davis v. Lambert 388 F. 3d 1052 (C.A. 7 2004); Bryan v. Mullin 335 F. 3d 1207 (C.A. 10 2003). 28 U.S.C.A. § 2254

HN 12 Substantial evidence means relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richard v. Perales 402 U.S. 389, 401 (1971)

HN 13 An unreasonable court decision is where the state court plainly misapprehend or mistake the record in making their findings, and the misapprehension can fatally undermine the fact-finding process, rending the resulting factual finding unreasonable. Sharp v. Rohling 793 F. 3d 1216 (C.A. 10 2015)(J135)

The state appellate court denial of the applicant's Post-Conviction Relief appeal is unreasonable. See Appellate Court Exhibit C2.

The applicant provided the evidence to substance his actual innocence claims in the form of Co-indictee Sutton's two affadavits. Exhibits U1 and U2.

Sutton stated in the affidavits that Kennedy was not involved in the crime. It is relevant because in the statement Sutton gave to the detectives, Sutton stated that he held the victim down while Kennedy got the knife. See exhibit U3. But in Kennedy's plea, those documents state Kennedy held the victim down while Sutton got the knife. Exhibits K. And Because the court's obvious failure to see the corroboration that both could not hold down the victim and get a knife there was not a proper de novo review on the merits to see who did what to obtain a clear adjudication on the merits.

Therefore pursuant to Miller v. Johnson (HN9) and Davis v. Lambert (HN 11), with Richard v. Perales (HN 12) the appellate court decision violated the applicant's right to a full and fair evidentiary hearing.

Also the applicant supported his actual innocence claim with an alibi witness of Roberta Terrill. Exhibit V.

Terrill statement with Sutton's can prove that the applicant was with her on the night and time of the crime. When the applicant by Motion for Phone Records (Exhibit X.) asked for the phone records made from where the applicant had called Terrill to prove that he was innocence, the state appellate court did not mention the motion for phone records, nor Terrill statement. The appellate court stated on page 4 of it's order it located all of the documents. Apparent from that statement it's fact-finding process was fatally underminded according to sharp v. Rohling (HN 13).

The state appellate court never considered that two other people identified other suspects not fitting the name and description of the appellant. The state court did not mention Younger and Webster (exhibits Y and Z), statements. That applicate provided to the courts that could prove his innocence and entitle him to an evidentiary hearing under Davis and Lambert (HN 11).

The appellate court also abused it's discretion by misquoting state post-conviction statutes MCA §§ 99-39-5, § 99-39-9, § 99-39-23.

The appellate court stated that the applicant only provided his affidavit and under the aforementioned statutes does not provide review on. Those statutes do allow unsworn statements. Further more and please note the conflicts with it's prior decisions in Ashwell v. State, 226 So.3d 69, 72 (Miss. 2017), Walden v. State 201 So. 3d 1042, 1046 (Miss. 2016), and Moore v. State 248 So.3d 845 (Miss. 2017), the state courts stated in these cases that affadavits do not have to be attached to Post-Convictions petitions if there are good reasons of why.

Why the reason the court did not have a notarized ~~reason~~ affidavit of his mother is because the Notarized affadavit could not be seen clearly see exhibit P. But his mother written one by her own hand see exhibit R. And there's an unsworn copy of the actual affidavit to compare Q.

So not only did the state appellate court cherry picked portions of the State Post-

Conviction statute's to deny him and evidentiary hearing, it admitted that the local circuit court did not hold an evidentiary on his mother affidavit violation of United States v. Beltran Guiterrez 19 F.3d 1287, 1289 (9th Cir. 1994) by abusing it discretion by erroneously interpreting a law. (HN 10). 28 U.S.C.A. § 2244.

Last, concerning the privilege under the newly discovered evidence requirements of the AEDPA not once took in consideration that the applicant was pro-se, indigent, and incarcerated could not go and collect evidence hisself nor hire an outside source to get Sutton's affidavits. But SCOTUS defined due diligence as "good-effort." Therefore he made the best effort he could. And making that good effort he discovered some examples that some Circuit Courts have recognized what could be considered as newly discovered evidence. They are as followed;

#1; Newly discovered evidence includes a letter discovered after conviction that mentioned new facts that added a dimension to a witness testimony that was not known before. U.S. v. Matilla 115 F.3d 1060, 1065 (1st Cir 1997);

*2; Newly discovered evidence includes codefendent's testimony unavailible at time of trial due to 5th Amendment privilege but which exculpated defendant a year after conviction. U.S. v. Matilla-Rivera, 115 F.3d 1060, 1065 (1st Cir 1997).

#3; Claim of ineffective assistance of counsel claim may be newly discovered if based on facts not know to defendant at time of trial, because defendant could not have known of counsel's negligent act until after trial. U.S. v. Johnson 12 F. 3d 1540, 1548 (10th Cir. 1993).

It's clear that the applicant did not know til after he was sentenced of the unrighteous acts of his counsel, for he had only an 8th grade education. It is also clear that his co-indictee affidavit could not be discovered due diligently because he did not have a lawyer. And what is also clear that his motion for phone records could prove his innocence but was suppressed by the state. ~~court~~. court.

What is clear that there was no clear adjudication on the merits, the merits have been res-judicated, with respect of the evidences, and the State Court fact-finding processes was unreasonable, pursuant to Miller (HN 9) Review de novo is evident.

Conclusion

Sometime the best lessons are learned the hard way. And the lesson here is that a bridge can be repaired, but you have to build relationships. The relationship between the Legislature and the Judicial Branch is the hardest one yet. Because it's the judicial branch duty to the people to check the legislature for any obstruction or discrepency in a bill that ordinary people would not be deceived nor denied any right or privileges sustained by the constitution. And if the judiciary fails the constitution is void. Someone once quoted a band-aid cannot cure cancer. So in that sense the judges are like a vaccine fighting more varients than a coronovirus everytime the government passes an undecipheable bill, such as the ones mentioned in this petition.

In 1994 the Mississippi Legislature passed the 85% Truth-in-Sentence bill. Like asbestos, at the time it seemed like a good idea. However, certain people like the applicant did not understand what it meant, nor what the government intentions were, because there was no clear clarification on what sentences would get parole and would not. And rather than the Judges who knew what the bill was for but rather than go against the grain and tag the bill for intransparency for not reaching the 5th Amendment parameter, MCA § 97-3-21 and § 47-7-3 circa 1995-1998 trapped innocents.

The applicant did not have the IQ of a judge or lawyer, neither his mother. But they knew about racial injustice. And the lawyer playing on the maternal nature of the applicants mother of not wanting to see her son die, did what she knew best, save her son from death. And she put it in writing, but the state court failed them by not hearing her live testimony in an evidentiary hearing setting. In all frankness it seems as if former democratic President William J. Clinton locked up the two million black that former replubican President Abraham Lincoln freed in 1865 because the facts is that blacks suffered the harshest prison terms than whites after 1994. Because the Legislature did not clearly set forth in those bills that parole would be prohibited to the applicant. If the applicant would have known that any life sentence would not get parole, would he have copped out to a natural life sentence voluntarily? No he would not. He would have gone to trial.

Now being honest the AEDPA is not the same act today as it was 27 years ago. There are resources availiable in the act now that was not there previously. And they were put there for protection, because the Courts discovered that within the AEDPA some constitutional boundries had been crossed. It's really surprising the SCOTUS has not voided the entire act, that the government will have no other choice but to write a bill that will not exceed the parameter of the constitutional liberties afforded by the bill of rights. But what happens to an unused resource? An missed oppurtunity. However unfortunate, the Supreme Court did establish an 'Actual-Innocence' provision, (gate-keeping provision) which the late beloved Justice Ruth Bader Ginsburg discussed the terms of in McQuiggin.

For actual-innocence to over-come time-and-procedural-bars serveral qualifications must be met. And the applicant met all of them. He exhausted all of the claims allowing every court below this court an oppurtunity to hear all the evidences. The applicant provided statements and affidavits and attempted to obtain phone logs by petitioning the courts to prove that he is innocent. And also shown how the statutes was void for vagueness. That is a showing of, 'but for constitutional error would the applicant be found guilty of the offense.' With the evidence provided he would think that no reasonable minded juror would find him guilty of the charge.

The evidences are located in the appendix and only an unreasonable judge would not grant this petition.

For the following reasons that the lower courts fact-finding process, mistaking the records, and not properly reaching the merits of the case, this Petition for Habeas Corpus should be granted.

Respectfully Submitted
Eric Denorris Kennedy
Date December 7, 2021