

ORIGINAL

No. 21-6772

IN THE
SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

JERRY LEE CANFIELD -- PETITIONER

Vs.

BOBBY LUMPKIN, DIRECTOR, TDCJ# 01848978 -- RESPONDENT

PETITIONER'S MOTION FOR REHEARING TO THE DENIAL OF HIS
PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS FOR CONSIDERATION TO GRANT REHEARING

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Petitioner, Jerry Lee Canfield, respectfully files this motion for rehearing, because the grounds are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds nor previously presented, and urges this Court to grant rehearing under the light of the new focus points as explained:

I. JURISDICTION:

Petitioner's petition for a writ of certiorari was denied on June 06, 2022, therefore, this Court has jurisdiction to grant rehearing for this document is filed on or before July 01, 2022, as required by Supreme Court Rule 44.

II. INTRODUCTION:

Silence! Silence by this Court will effectively approve the injustice that has occurred, is occurring, and will occur. Silence! Silence by this Court has effectively amended the 6th Amendment to read: "Certian criminal prosecutions has a right to trial by a partial and biased jury." Silence! Silence by this Court now grants all trial courts in the Fifth Circuit the authority to place partial and judgmental people to hear criminal cases with the mindset to require

a defendant to prove innocence beyond a reasonable doubt. QUESTION 1: HOW CAN SILENCE CHANGE A PERSON'S VERBAL EXPRESSION OF BIAS TO VOTE GUILTY "JUST BECAUSE I AM HERE AT TRIAL?" Silence! Silence! This Court must not remain silent and let this evil to pass by, and allow injustice to continue without just correction. For ARTICLE III OF THE UNITED STATES CONSTITUTION demands this Court to resolve the controversies between the government and Petitioner, and between the Fifth Circuit and the many other circuits to the United States holding the contrary.

III. THE PARTIALITY OF A JUROR IS A QUESTION OF FACT, NOT MIXED QUESTION OF LAW AND FACT.

From the beginning, the government argues and held that the partiality of a juror is a mixed question of law and fact. Under the mixed question of law and fact standard, the government is correct that "this Court has never held that a biased juror cannot be rehabilitated through silence in response to group questioning." See Brief in Opposition, Pg. 7. QUESTION 2: WHAT INDICATES TO THIS COURT THAT SILENCE WILL CHANGE A BIASED JUROR'S MINDSET? According to Patton v. Yount, silence does not change a person's mindset to vote guilty before trial even starts.

From the beginning, the Petitioner argues, in which Justice Higginbotham agrees, and this Court has held in Patton that an issue concerning the partiality of a juror is an historical question of fact: Did Juror [Tarver] swear that [she] could set aside any opinion [she] might hold and decide the case on the evidence, and should the juror's protestation of impartiality [not silence] have been believed?" Patton, 104 S.Ct. 2885, 2891 (1984). Being a question of fact there is clearly established Supreme Court authority to grant habeas relief under section 2254(d). This Court must revisit this issue.

Rehearing must be granted and this Court should invite amicus curiae briefs

from Justice Higginbothom, and other Circuit justices and attorney generals/solicitor generals. This Court must not remain silent and allow the government to declare that silent rehabilitation of a juror constitutes an assurance of impartiality. QUESTION 3: MUST THIS COURT DECLARE THE PARTIALITY OF A JUROR TO BE A QUESTION OF FACT? Compare Wainwright v. Witt, 105 S.Ct. 844, 855 (1985)(It will not always be easy to separate questions of "fact" from "mixed questions of law and fact" for § 2254(d) purposes.); Thompson v. KeaHane, 116 S.Ct. 457, 465 (1995)(the practical considerations that have prompted the Court to type questions like juror bias and competency as "factual issue(s)," and therefore governed by § 2254(d)'s presumption of correctness, are not dominant here.).

This Court must not "act like sharks who have caught the scent of blood in the water" because a convicted felon has a right to be tried by an impartial jury, who speaks out and proclaims they can be fair and decide the case on the evidence induced at trial also. This Court clearly established that when a juror verbally expresses an actual bias, it is the duty of Counsel to ask individually whether that juror can verbally express that she could "lay aside her impression or opinion and render a verdict based on the evidence presented in Court." Compare, Ducan v. Louisiana, 391 U.S. 145, 149 (1968)("We found this right to trial by jury in serious criminal cases to be fundamental to the American scheme of justice, and therefore applicable to state proceedings."); Irvin v. Dowd, 366 U.S. 722 (Citing In re Oliver, 333 U.S. 257 (1948)), and Tumey v. Ohio, 273 U.S. 510 (1927)("[T]he right to jury trial guarantees to the criminal accused a fair trial by a panel of impartial, indifferent jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process); & Patton, 104 S.Ct. 2884, 2891 (1984)(Juror impartiality is plainly a historical fact to question "did a juror swear that he or she could set aside any opinion [s]he might hold and decide the case on the evidence[.]").

As a result, "Canfield's Counsel was obligated to use a peremptory or for cause challenge on M.T. because he failed to do so, his performance was deficient." Canfield, 998 F.3d at 253.

Further, voir dire is law french for "to speak the truth[,]" and refers to "[a] preliminary examination of a prospective juror by a "trial court" to decide whether [M.T.] is qualified and suitable to serve on a jury." Voir Dire, Black's Law Dictionary (10th Ed. 2014). In other words, voir dire means to speak the truth, not remain silent then let Counsel and the Court speculate who could be fair and impartial. QUESTION 4: WHAT USE COULD VOIRE DIRE EXAMINATION POSSIBLY SERVE WHEN BIASED JURORS REMAIN SILENT? NONE! The effect is devastating and the cornerstone of our impartial jury right is void. In ringing terms, silence at voir dire selection is just like sending the defendant to the slaughter and requiring him to prove his innocence. Ducan, 391 U.S. at 149 (a criminal defendant has a fundamental right to a fair, and impartial, and indifferent jury, being the cornerstone of our justice system, who will verbally state that he or she can lay aside his or her impression or opinion and render a verdict based on the evidence presented at trial.).

On pages 7-8 to Repsondent's Brief in Opposition, the attorney general argues under the mixed question of law and fact: "because there is no Supreme Court authority holding that silent rehabilitation is inappropriate and Texas case law allows for silent rehabilitation:" therefore, as the Respondent erroneously asserts, Counsel was "not deficient because the state Courts reasoned that M.T. was rehabilitated by her silence in response to group questioning." This Court must not remain silent because this Court contrarily reasoned that jurors are ordinary people, they are expected to speak, debate, argue, and make decisions the way ordinary people do in their daily lives. Our Constitution places great value on this way of thinking, speaking, and deciding," not

to remain silent. Pena-Rodriquez v. Colorado, 137 S.Ct. 855, 874-75 (2017).

Truly, a silent jury deliberation never constitutes a verdict; likewise, silent rehabilitation never constitutes an assurance of impartiality. In ringing terms, silent rehabilitation to a group questioning after speaking out, and expressing actual bias the way ordinary people do, has never been the focus of our Constitution or the many precedent holdings of this Court, and the many other Circuits decisions concerning voir dire selection.

According to Clarence Thomas in Shinn v. Ramirez on May 23, 2022, "if your trial lawyer is bad and your appellate lawyer is bad, then you can be put to death even if you are innocent." See Article "SSupreme Homicide" on The Nation, Vol. 314, No. 13, Pg. 8 (June 23/July 04, 2022)(TheNation.com/register). Silence! By remaining silent and not granting certiorari or rehearing is declaring if your trial lawyer is bad and your appellate lawyer is bad then you can be convicted even by a partial and biased jury. QUESTION 5: DOES A CRIMINAL DEFENDANT HAVE A CONSTITUTIONAL RIGHT TO AN IMPARTIAL JURY, EVEN IF THE EVIDENCE IS OVERWHELMINGLY ONE-SIDED? According to the Respondent, the only published decision regarding silent rehabilitation is found in Leadon v. State, the Houston Court of Appeals, declared that "venire person are rehabilitated by remaining silent when they do not affirmatively state they cannot follow law." Id., 332 S.W.3d 600, 616 (Tex. App. --Houston [14th Dist.] 2010, no pet.). In Leadon, no one spoke up like M.T. did! M.T. affirmatively stated that she cannot follow the law because "Canfield is guilty before we even start trial." Canfield, 998 F.3d at 252-53. Axiomly stated, the Respondent's argument fails and this case is appropriate, even under the guidelines of Section 2254(d), because this Court's mandatory decisions have always requiried a juror to speak out, and state that she can "lay aside her impressions or opinion and render a verdict based on the evidence presented in Court," not to remain silent after her ex-

pression of actual bias. See Canfield, 998 F.3d at 252-53 ("At no point did she clearly express that she could "lay aside h[er] impression or opinion and render a verdict based on the evidence presented in court.") (citing Irvin, 366 U.S. at 723). This is a question of fact, and this Court must declare and grant certiorari and rehearing. Patton, 104 S.Ct. at 2891.

IV. THE FIFTH CIRCUIT MUST FOLLOW THE DOCTRINE OF STARE DECISIS PERTAINING TO AN IDENTICAL FACTUAL SITUATION.

Silence! IS THE SILENT REHABILITATION TO GROUP QUESTIONING CONSIDERED A COMPELLING REASON NOT TO FOLLOW THE DOCTRINE OF STARE DECISIS TO DENY PETITIONER RELIEF, WHERE THE FIFTH CIRCUIT GRANTED FRANK VIRGIL RELIEF ON AN IDENTICAL FACTUAL SITUATION CONCERNING INEFFECTIVE COUNSEL IN FAILING TO CHALLENGE A BIASED JUROR? See Virgil v. Dretke, 446 F.3d 598 (5th Cir. 2006) (The Fifth Circuit used Irvin v. Dowd, to declare Counsel ineffective on both Strickland prongs and declared it to be an unreasonable application under § 2254(d)); Compare Canfield v. Lumpkin, 998 F.3d 242, 252-55 (5th Cir. 2021) (M.T., like Sumlin and Sims, demonstrated that she was biased).

This Court must not be silent, and must grant rehearing, certiorari, and invite amicus curiae briefs from Justice Higginbotham, and other Circuit Justices, and attorney generals/solicitors generals. Just as Sonia Sotomayor's dissented in Shinn v. Ramirez, on May 23, a denial will be "perverse" and "illogical" and "makes no sense," to authorize the Fifth Circuit to reconstruct the 6th Amendment to read: "certain criminal prosecutions has a right to trial by a partial and biased jury." Just the other day, this Court struck down New York's gun law that violated the 2nd Amendment's right to bear arms, then allowed citizens to carry concealed weapons, despite all the mass murders of civilians and children. Therefore, QUESTION 7: WHY CANNOT THIS COURT UPHOLD THE 6TH AMENDMENT'S RIGHT TO BE TRIED BY AN IMPARTIAL JURY, WHERE TARVER OPENLY

ADMITTED BIAS AGAINST THE DEFENDANT, DESPITE THE OVERWHELMINGLY ONE-SIDED EVIDENCE AGAINST PETITIONER? This Court must not remain silent to grant relief.

QUESTION 8: DOES TWO JUSTICES IN THE FIFTH CIRCUIT HAVE MORE POWER THAN THIS COURT?

Sonia Sotomayer must not remain silent as she declares "our Constitution insists, however, that no matter how heinous the crime, any conviction must be secured respecting all Constitutional protections." See Article: "Supreme Homicide" The Nation, Vol. 314, Number 13, Pg. 10 (June 27/July 04, 2022). To refuse to grant certiorari, and rehearing, has and will infect the United States with a deadly disease to violate all citizens foundational rights to be tried by an impartial jury when accused of a serious crime. Compare Petitioner's Principle Brief, Pgs. 11-19, & Reply Brief. QUESTION 9: DOES A CONVICTED FELON'S CONSTITUTIONAL RIGHTS MATTER? For this Court must not remain silent and must reaffirm with clarification what this Court has always ruled: "Once a juror expressed actual bias, that juror must be pinned down and asked individually to verbally speak out; and must declare that she can be fair and impartial by setting aside her impression or opinion and render a verdict based on the evidence presented in Court. See Irvin, 366 U.S. at 723 (citing Spies v. Illinois, 123 U.S. 131 ; Holt v. U.S., 218 U.S. 245; Reynolds v. U.S., 98 U.S. 145, 155 ("the theory of the law is that a juror who has formed an opinion cannot be impartial.")).

V. THE PRESENCE OF A BIASED JUROR UNDERMINES CONFIDENCE IN THE RELIABILITY OF THE VERDICT AND THEREBY ESTABLISHES STRICKLAND'S PREJUDICE.

This Court must grant certiorari, rehearing, and invite amicus curiae briefs to establish what the law is regarding juror bias, even if the Court denies Petitioner relief as this Court has in Strickland; therefore, QUESTION 10: CAN A CRIMINAL DEFENDANT SHOW PREJUDICE BY FUNDAMENTAL UNFAIRNESS UNDER STRICKLAND?

At the beginning, Counsel told the Plaintiff's how to get on the jury: "Let me

just let you in on a little secret like I say, we get to strike ten people, and it's usually because of something you say to us. So the quiet people really—I mean, seriously, the quiet people are probably going to be over here." See Attachment B. Counsel effectively told Tarver to remain silent. Id. Further, the group questioning the State and Fifth Circuit keeps referring to, left out very important statements that Counsel kept attaching to those burden of proof/pre-sumption of innocence group questions as laid out by the Fifth Circuit: "Anyone else other than those that we've talked about -- that Mr. Nickols talked about earlier -- talked to earlier who says, I just don't know if I can give him that presumption of innocence." Also termed "for the group" we have not questioned yet. Compare Canfield, 998 F.3d at 244-45. See Attachment C. These statements here told Tarver that she did not have to say anything further because she already expressed her actual bias. See Attachment D. Again, Mr. Brookins said: "I probably couldn't give [Petitioner] a fair trial." Counsel responded, as well with others, the proper rehabilitation method and said "we have to have a definitive answer." I'm not trying to back you in a corner. But if i had to ask you a point blank can you give him a fair trial, can you? See Attachment E.

Truly, Counsel believed he had no duty to individually ask each juror "can you be fair and impartially review the evidence at trial?" Counsel reveals a mindset that he is not obligated to question whether a panelist can be fair and impartial. Patton v. Yount, however, speaks against this rationale. Id., 104 S.Ct. at 2891 (Juror impartiality is plainly a question of historical fact: "Did [Tarver] swear that [s]he could set aside any opinion [s]he might hold and decide the case on the evidence[.]"). Nevertheless, QUESTION 11: COUNSEL STILL ASKED MR. BROOKINS WHETHER HE COULD BE FAIR, WHY COULDN'T COUNSEL SIMPLY ASK THE SAME OF MS. TARVER, UNLESS HE HAD A MINDSET OF AGREEMENT WITH NOT TESTING THE STATE'S CASE TO AN ADVERSARIAL TESTING? Contrary to Counsel's mindset,

Justice Higginbothom relying on the stare decisis doctrine using an identical case, namely Virgil v. Dretke, declared: "Counsel was obligated to use a pre-emptory or for-cause challenge on M.T." See Canfield, 998 F.3d at 252-53.

Further, Counsel was confused that he had "ten challenges for cause." See Tex. Code.Crim. Proc. Ann. Art. 35.15(b) & 35.16 (limiting peremptory strikes to ten but not mentioning a limit on for-cause strikes). Contrary to this confusion, Counsel told the panel "we have 10 strikes for whatever we want." RR2, 87. Just like in Virgil where Counsel did not elaborate on why he didn't challenge the jurors for cause, Petitioner's Counsel did not elaborate either on the matter because he is simply wrong. Although the majority says Petitioner forfeited this fact, the state never address it either. Therefore, this Court must review this fact de novo and for plain error. Truly, in Hinton v. Alabama, this Court declared that "an attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland. Hinton, 134 S.Ct. 1081, 1089-90 (2014).

If it is revealed in voir dire that Counsel acted with ignorance of two points of law combined with his failure to use peremptory strike or for-cause challenge on Tarver. Then, QUESTION 12: WHAT INDICATES TO THIS COURT THAT COUNSEL ACTED SUFFICIENTLY WITHOUT ANY PREJUDICE DURING TRIAL AND NOT TO UNDERMINE CONFIDENCE OF THIS COURT? The Fifth Circuit pointed out that "Counsel did not impeach the State's witnesses or otherwise cast doubt on the veracity of their testimony. Counsel did not offer any witnesses on behalf of Petitioner. And as a result, the jury convicted within 30 minutes or an hour of deliberation." Canfield, 998 F.3d at 248-49. And the Fifth Circuit concluded that "based on this overwhelmingly one-sided evidence, there is no reasonable probability that, but for M.T.'s presence, the jury would have acquitted." Id.

The Fifth Circuit's statement proves that there is ample evidence that Counsel failed to subject the State's case to an adversarial testing as described in Cronic. See U.S. v. Cronic, 104 S.Ct. 2039, 2045-46 (1984)(The adversarial process protected by the Sixth Amendment requires that the accused have "Counsel acting in the role of an advocate," the right of the "accused to require the prosecution's case to survive the crucible of meaningful adversarial testing."). Counsel could not impeach any of the State's witnesses because he was not prepared. A simple investigation and interview to both M.C.'s brother and sister would have proved their testimony carries impeaching evidence. Being unprepared, Counsel's cross-examination was impaired and ineffective. Counsel could have inquired funds for an expert to test the expert that said "a child who was coaxed would be unlikely to know detailed sensory information." One more look at the victim's testimony by this Court will show that M.C.'s testimony was laced with recanting testimony, that seemed to be coaxed. And if it was not coaxed, why would the victim question the State on whether he made noises or not? Therefore, Counsel was unprepared to go against the State expert. Also, by being unprepared he presented no witnesses on Petitioner's behalf. Counsel's conduct, here, so undermines the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Strickland, 466 U.S. 668, 686, 104 S.Ct. 2052. Absent the effective assistance of Counsel, this Court must conclude that a "serious risk of injustice infected Petitioner's trial itself." Guyler v. Sullivan, 466 U.S. 335, 343 (1980).

This Court must grant rehearing and invite amicus curiae briefs because under the stare decisis doctrine, the Fifth Circuit's inquiry has always rested "on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision." Virgil, 446 F.3d at 612 (quoting Strickland, 466 U.S. at 695).

In Virgil, the Fifth Circuit found that the same failure Petitioner identifies resulted in Strickland prejudice and an "unreliable trial." In Particular, Counsel's failure to challenge two jurors who "unequivocally expressed that they could not sit as fair and impartial jurors" deprived Virgil of "a jury of persons willing and able to consider fairly the evidence presented." Id., 446 F.3d at 613 (quoting Strickland, 466 U.S. at 696). The Fifth Circuit observed that "[no] question was put to either Sumlin or Sims as to whether they would be able to set aside their preconceived notions and adjudicate Virgil's matter with an open mind, honestly and competently considering all the relevant evidence. Id. Thus, the Court could not "know the effect [that] Sumlin's and Sim's bias had on the ability of the remaining ten jurors to consider and deliberate, fairly and impartially, upon the testimony and evidence presented at Virgil's trial." Id. Unable to sustain Strickland's presumption of an impartial jury, the Fifth Circuit concluded that they "lack[ed] confidence in the adversarial process that resulted in Virgil's felony conviction and 30 year sentence." See also, Biaga v. Valentine, 265 Fed. App.'x 166, 172 (5th Cir. 2008)(per curiam) (unpublished)(citing Virgil)("[T]he effect that [the biased juror's] presence on the jury had on the ability of the remaining jurors to consider and evaluate the testimony and evidence will never be known. Given this uncertainty, [the habeas Petitioner's] conviction is unworthy of confidence and, as such, constitutes a failure in the adversarial process.").

The same is true for Petitioner. As a result of Counsel's error, a juror who expressed a preconception of Petitioner's guilt and unwillingness to hold the State to its burden of persuasion, and who was not clearly rehabilitated on either point, sat on the jury that first convicted Petitioner and then sentenced him to 50 years' imprisonment without parole. Cf. Virgil, 466 F.3d at 612-13. The law, however, mandated that the juror be willing to lay aside her precon-

ception. See Irvin, 366 U.S. at 723. Because M.T. was never asked if she could do so and there is no record evidence that she in fact did so, Counsel's failure to challenge her denied Petitioner an impartial jury. Virgil, 466 F.3d at 613. No one can say how a jury would have decided the case absent Tarver. It only takes one for a mistrial, therefore, it must only take one for a new trial. See Parker v. Gladden, 385 U.S. 363 (1966). In fact, the trial judge two weeks prior to Petitioner's instant case declared a mistrial because a "juror informed the Court on the first day testimony was slated to begin that she could not be fair because she was biased." RR2, 7. Taken together, the presence of a biased juror undermines confidence in the reliability of the verdict and thereby establishes prejudice. Virgil, 466 F.3d at 613-14; Strickland, 466 U.S. at 689, 696. This Court should revisit this issue and once again clarify to the lower Courts that a defendant can prove prejudice through fundamental unfairness as this Court established in Strickland or overrule Strickland in part. Id.

VI. ALTERNATIVELY THE PRESENCE OF A BIAS JUROR MUST NOT BE SUBJECT TO HARMLESS-ERROR/PREJUDICE ANALYSIS.

In the alternative there is a compelling interest for this Court to grant rehearing, certiorari, and invite amicus briefs to resolve the conflict among the Circuits on the 13th Question of WHETHER "A BIAS JUROR IS NOT SUBJECT TO HARMLESS-ERROR ANALYSIS ON HABEAS? According to the following courts decisions "a bias juror is not subject to harmless analysis." Andre v. Jones, 2017 U.S. Dist. Lexis 87468 (S.D. Fla.); Johnson v. Russo, 2017 U.S. Dist. Lexis 184931 (Mass.); Rosa v. Sec'y, Dep't of Corr., 2017 U.S. Dist. Lexis 20319 (M.D. Fla); United States v. French, 904 F.3d 111 (1st Cir. 2018); Blankenburg v. Miller, 2017 U.S. Dist. Lexis 93840 (S.D. OH.).

However, the Fifth Circuit held in Canfield v. Lumpkin, that "even if a juror is biased, the issue is subjected to harmless-error analysis. Id., 998

F.3d at 248. This Court needs to resolve this conflict and grant rehearing and certiorari to properly instruct and refresh the lower Courts on the past decisions of this Court in: Parker v. Gladden, 385 U.S. 363 (1966); Dennis v. U.S., 339 U.S. 162 (1950); Ducan v. Louisiana, 391 U.S. 145 (1968); Gomez v. U.S., 490 U.S. 858 (1989); Gray v. Mississippi, 481 U.S. 648 (1987); Irvin v. Dowd, 366 U.S. 717 (1961); Patton v. Yount, 104 S.Ct. 2884 (1984); Turner v. Louisiana, 379 U.S. 466 (1965); Tumey v. Ohio, 273 U.S. 510 (1927).

VII. CONCLUSION.

In conclusion, the pressure of overturning Roe v. Wade is over! This Court therefore must take the time to individually revisit Petitioner's petition for writ of certiorari, reply to Respondent's Brief in Opposition, GRANT rehearing to answer any questions herein, grant certiorari, and invite amicus curiae briefs from Justice Higginbothom, Justices in other Circuits, and Attorney Generals/ Solicitor Generals. For it is not right for Texas to place an innocent man in prison, for 50 years without parole, be means of putting ineffective Counsel who refuses to subject the State's case to an adversarial testing, then place biased jurors to require defendant to prove his innocence beyond a reasonable doubt. Again, no one can say how a jury would have decided the case absent Tarver. It only takes one for a mistrial, it therefore must take one for a new trial! This Court must not remain silent and must not allow Texas to deprive its citizens of all Constitutional protections that Sonia Sotomayer has spoken of.

XIII. PRAYER FOR RELIEF:

This Court should and must individually review Petitioner's petition for writ of certiorari again, reply brief again, and this motion, then GRANT rehearing, grant certiorari, revisit the compelling issues at bar. And/or invite amicus briefs from Justice Higginbothom, Justices in other Circuits, Attorney Generals/Solicitor Generals, and from any school of law to aid in finding the

just result to GRANT relief as stated and speak up to address the United States for justice requires it. Justice requires this Court to speak up and GRANT rehearing.

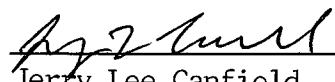
Respecffully submitted,



Jerry Lee Canfield
#01848978 - Coffield Unit
2661 FM 2054
Tenn. Colony, Texas 75884-5000
Pro se Litigant.

IX. INMATE DECLARATION

I, Jerry Lee Canfield, TDCJ# 01848978, being incarcerated in the TDCJ-CID Coffield Unit in Anderson County, Texas, declares under the penalty of perjury that the foregoing above is true and correct. Executed on this 29 day June, 2022.



Jerry Lee Canfield
#01848978 - Coffield Unit
2616 FM 2054
Tenn. Colony, Texas 75884-5000
Pro se Litigant.

№. 21-6772

In The

SUPREME COURT OF THE UNITED STATES

JERRY LEE CANFIELD,

Petitioner,

vs.

BOBBY LUMPKIN, DIRECTOR, TDCJ-CID,

Respondent.

CERTIFICATION OF A PARTY UNREPRESENTED BY COUNSEL

AS REQUIRED BY RULE 44.2

Petitioner, Jerry Lee Canfield, unrepresented by Counsel hereby certifies to this Court that the grounds or issues presented in his motion for rehearing are restricted to the grounds specified in Rule 44.2 which are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Thus, the Petitioner's motion for rehearing is presented to this Court in good faith and not for delay, but to seek for justice to be upheld.

I, Jerry Lee Canfield, being incarcerated in the TDCJ-CID Coffield Unit in Anderson County, Texas, declares that the foregoing is true and correct under the penalty of perjury. Executed on this 29 th day of June, 2022.



Jerry Lee Canfield
#01848978 - Coffield Unit
2661 Fm 2054
Tenn. Colony, Texas 75884
Please litigant.

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY LEE CANFIELD - PETITIONER

Vs.

BOBBY LUMPKIN, DIRECTOR - RESPONDENT

DECLARATION OF INMATE FILING

I am an inmate confined in an institution. Today the 29 day of June 2022, I am depositing the Petitioner's motion for Rehearing to the denial of his Writ of Certiorari, informa puauperis, certificate of service, certificate of compliance, certification of counsel in this case into the institution's internal mailing system. First-class postage is being prepaid either by me or by the institution on behalf. See Richard v. Thaler, 710 F.3d 573, 579 (5th Cir. 2013) (quoting Houston v. Lack, 487 U.S. 266, 270 (1988)).

I declare under the penalty of perjury that the foregoing above is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621. Executed on this 29 day of June 2022.



Jerry Lee Canfield
#01848978 - Coffield Unit
2661 FM 2054
Tenn. Colony, Texas 75884-5000
Pro se litigant.

NO. 21-6772

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY LEE CANFIELD - PETITIONER

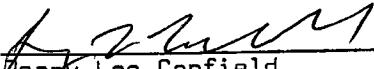
vs.

BOBBY LUMPKIN, DIRECTOR - RESPONDENT

CERTIFICATE OF COMPLIANCE

I certify that this document is in compliance with the rules of this Court because the document is 14 pages and does not exceed the maximum of 15 pages as stated in Supreme Court Rule 33.2(b). Excluding parts exempt.

I, Jerry Lee Canfield, TDCJ #01848978, Petitioner in the above -styled and -numbered, being incarcerated in the TDCJ-CID Coffield Under the penalty of perjury. Executed on this 29 day of June 2022.



Jerry Lee Canfield
TDCJ-#01848978 - Coffield Unit
2661 FM 2054
Tenn. Colony, Texas 75884
Pro se litigant.

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY LEE CANFIELD - PETITIONER

Vs.

BOBBY LUMPKIN, DIRECTOR - RESPONDENT

CERTIFICATE OF SERVICE

I, certify that one true and correct copy of the Petitioner's Motion for Rehearing to the denial of his petition for a writ of certiorari, has been served to the Respondent's Counsel, addressed below, by placing the document into the U.S. Mail, with first-class postage prepaid and certified mail return receipt requested:

Office of the Texas Attorney General
Criminal Appeals Division
 ATTN: Ms. Jessica Manojlovich
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Certified Mail #7020-640-0000-4619-4690
Return Receipt #9590-9402-5949-0062-5967-11

I, Jerry Lee Canfield, TDCJ #01848978, Petitioner in the above -styled and -numbered cause, being incarcerated in the TDCJ-CID H.H. Coffield Unit in Anderson County, Texas, declares that the above Certificate of Service has been executed on this 29 day June 2022, under the penalty of perjury.



Jerry Lee Canfield
#01848978 - Coffield Unit
2661 FM 2054
Tenn. Colony, Texas 75884-5000
Pro se litigant.

**Additional material
from this filing is
available in the
Clerk's Office.**

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY LEE CANFIELD - PETITIONER

Vs.

BOBBY LUMPKIN, DIRECTOR - RESPONDENT

~~PETITIONER'S MOTION FOR REHEARING TO THE DENIAL OF HIS
PETITION FOR A WRIT OF CERTIORARI~~

THE APPENDIX VOLUME

APPENDIX A: Court's order denying Petition for Writ of Certiorari, June 06, 2022.

APPENDIX B: Trial Counsel tells venire panel who will sit in the jury box, the panelist's who are quiet. RR2, 87-88.

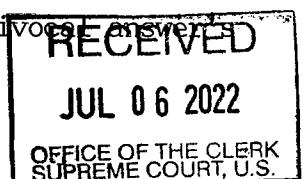
APPENDIX C: Trial Counsel instructs the jury that this question to the burden of proof is directed at "anyone else "other than those that we've talked about -- that Mr. Nickols talked to earlier." RR2, 89-90.

APPENDIX D: Complete colloquy between Mr. Nickols (State) and Ms. Tarver (juror number 12). RR2, 71-76.

APPENDIX E: Trial Counsel ask's for a "définitive" answer from Mr. Brookinsson his reply of "probably!" RR2, 104-105.

APPENDIX F: Trial Counsel poses a question and specifically states its for the Group! RR2, 107.

APPENDIX G: Trial counsel pinnes down several juror's for unequivocal answers to



APPENDIX to the question "can you give Jerry a fair trial." But Counsel fails to pinn down Ms. Tarver. RR2, 100-103, 106.

APPENDIX H: Trial Counsel and the Court as a discussion on the fact that "this proceeding/trial actually started two weeks ago, but a mistrial was declared due a juror admitting bias, and motion for continuance was denied. RR2, 07; RR2, b04006, a08 (RR2, 04-01, 08. Due to not having ~~any~~.)

APPENDIX I: The state instructs the venire panel that "we must have a yes or no." RR2, 27.

APPENDIX J: Trial Counsel ask's venire panel "is there anyone here -- I know this question has already been asked, and I know a lot of you have already answered it, but I just want to make sure. Is there anything about this particular offense for whatever reason, this case is not for you." RR2, 115-117.

APPENDIX A

Court's order denying Petitioner for Writ of Certiorari, June 06, 2022.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

June 6, 2022

Mr. Jerry Lee Canfield
Prisoner ID TDJC #01848978
H.H. Coffield Unit, 2661 F.M. 2054
Tennessee Colony, TX 75884

Re: Jerry Lee Canfield
v. Bobby Lumpkin, Director, Texas Department of Criminal
Justice, Correctional Institutions Division
No. 21-6772

Dear Mr. Canfield:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

"A"

APPENDIX B

Trial Counsel tells venire panel who will and how they will sit in the jury box.

RR2, 87-88

1 comfortable, by the way, aren't they? I just want to
2 make sure.

3 And I -- the reason we had you take a break
4 is because, you know, the mind can only absorb what the
5 posterior can endure, so everybody's okay to go on for a
6 little while?

7 Okay. I'll try to keep it as brief as I
8 can, but there are a few issues that I want to talk
9 about.

10 Let's start out with this: Does anyone
11 know how we get from, what, 58, 59 people to 12 over
12 here?

13 Does anybody know how that works?

14 Does anybody have an idea?

15 Give you a hint. Mr. Nickols said that
16 we're probably not going to be reaching the people over
17 here.

18 Anybody?

19 Okay. I'll tell you. It's everybody
20 says -- refers to it as jury selection, but we don't
21 really select a jury. Here's the way it works. At the
22 end of my presentation, at the end of my questioning,
23 each side, myself and the government, is going to be
24 able to strike ten people for basically whatever reason.
25 You know, if I don't like the way you're looking at me

1 or if I don't like the color of shirt you're wearing,
2 whatever, we get to strike ten people each. Okay. Then
3 the first 12 that are left are your jury.

4 So you're probably in the -- you're in the
5 catbird seat right now, No. 1, and it goes from there.
6 Okay. But I mean, the first ten -- or excuse me, the
7 first 12 that are selected after we make our strikes is
8 how we make our jury.

9 So let me ask you this: Who wants to be on
10 the jury, honestly?

11 Come on. Well, let me give you a little
12 secret. Let me just let you in on a little secret.
13 Like I say, we get to strike ten people, and it's
14 usually because of something you say to us. So the
15 quiet people really -- I mean, seriously, the quiet
16 people are probably going to be over here.

17 Now, I'm not saying that you have to talk
18 just for the sake of talking. But if you feel you have
19 something to say, now would be a good time to say it.
20 Okay. Because if you have -- you're sitting there and
21 something -- and sometimes maybe we're talking,
22 addressing one particular person, and you're over here,
23 you think, Well, I really have something to say, but he
24 didn't point at me. Raise your hand.

25 It's a good idea to say, Look, I've got

APPENDIX C

Trial Counsel instructs the jury that this question to the burden of proof is directed at "anyone else other than those that we've talked about -- that Mr. Nickols talked to earlier.

RR2, 89-90.

1 something I want to say on the topic, raise your hand to
2 let us know. Okay. Everybody agree to do that?

3 It will make the process go a lot faster.
4 Because like the Judge said, we only have a certain
5 amount of time to talk to you, so it will make
6 everything go a lot quicker.

7 Okay. Start at the beginning. The State
8 has the burden of proof. We all know that, right?
9 Anyone here -- and we've talked about it with certain
10 people who just says, I just can't give the defendant
11 the burden of proof, and that's fine. That's okay.

12 Is there anyone else here who would say, I
13 just don't know if I can give him that burden?

14 Because think about it that way: If
15 someone -- if it was one of your loved ones sitting over
16 here, wouldn't you want him to have 12 fair and
17 impartial jurors decide his fate? Would you agree?

18 Okay. So sometimes you may be sitting
19 there thinking, saying, I don't know, should I really
20 say something? I don't know if it's really important.

21 It's important. If you're kind of on the
22 fence about whether you think you can be fair, just let
23 us know. Maybe we can -- maybe we can see if we can get
24 you on the side that you need to be.

25 Anyone else other than those that we've

1 talked about -- that Mr. Nickols talked about earlier --
2 talked to earlier who says, I just don't know if I can
3 give him that presumption of innocence. I -- you know,
4 this type of offense is just not for me.

5 Is it Mr. Tarrant?

6 VENIREPERSON: Yes, sir.

7 MR. ALFORD: Yes, sir. What can --

8 VENIREPERSON: I apologize to Mr. Nickols
9 for not speaking up earlier. But when I saw that range
10 of punishment up there, 25 years to life, I thought
11 about it, and thought about it on break, I just can't
12 see putting someone away without being 100 percent
13 certain that he is guilty of it, especially in light of
14 what's gone on in Dallas County and other counties in
15 the state where innocent men have spent years and years
16 and years and have been proven innocent and have gotten
17 out. You're talking about ruining a person's life
18 that's been in prison that long. That the State can
19 give them that 80,000 a year for 20 years. That money
20 is meaningless. They've been robbed of their -- their
21 lives, literally. That's the way I feel about it.

22 MR. ALFORD: I appreciate your honesty.
23 That's a very candid and honest response, and that's the
24 kind of things that we want to talk about. Because,
25 like I say, we can't ask each one of you individually.

APPENDIX D

Complete colloquy between Mr. Nickols (State) and Ms. Tarver (juror number 12).

RR2, 71-76.

1 had to take a vote right now, you would have to find him
2 not guilty because you haven't heard any evidence yet.
3 Every single person in the United States accused of any
4 criminal case, from a traffic ticket to this, is
5 presumed innocent.

6 Now, my mother would tell you, Hey, he's
7 been arrested, he's been indicted by a grand jury, he's
8 sitting in a chair here at trial, it's not because he
9 did something good. Anybody feel that way?

10 You know what? That -- that's a normal
11 reaction. You know, a lot of people, when you came in,
12 you probably wondered, What did he do? That's a normal
13 thing. Just because that's something you think, Hey,
14 they probably wouldn't have gotten here without some
15 sort of evidence, or I wouldn't have a trial without it.
16 That's a normal thing.

17 What I have to get is a commitment from
18 you. Can you say, Okay, I can set that aside, as he
19 sits here right now, I can presume him innocent?

20 Now, once we cross that threshold, you can
21 find him guilty. Once testimony starts, you can change
22 your mind. But as he sits here right now, does anyone
23 feel like they cannot presume the defendant innocent?
24 And it's okay if you do.

25 Mr. Jacobs, you feel like you can't do

1 that?

2 VENIREPERSON: Not unless it's proven to me
3 like tenfold over.

4 MR. NICKOLS: Proven to you which way?

5 VENIREPERSON: Just saying I won't be on
6 the defendant's side until way at the end of it or
7 probably not at all.

8 MR. NICKOLS: You know what? You don't
9 have to choose sides. I like the way you said that. As
10 you sit here right now -- because it sounds to me like
11 what you're saying is, Hey, if I think this guy did it,
12 he's going to (unintelligible), right?

13 VENIREPERSON: Yeah.

14 MR. NICKOLS: If we don't prove he did it,
15 are you going to find him guilty?

16 VENIREPERSON: Probably.

17 MR. NICKOLS: Even if we don't prove him
18 guilty and you think he's guilty?

19 VENIREPERSON: I think, you know, the
20 State's not going to waste this much money for all you
21 guys working, I'd assume, up here with him not almost
22 already proven guilty.

23 MR. NICKOLS: You know what? Normal
24 response. You know, we're not going to be -- having us
25 up here. We're going to resource into this, and it's

1 okay to think that. But, hey, people are found not
2 guilty in courthouses every day across America, right?
3 I mean, we're not batting a thousand over here.

4 And so to kind of have the mind-set walking
5 in and saying, Hey, this probably wouldn't happen unless
6 they had evidence, maybe he did do it, that's normal.

7 (Unintelligible) and if you can't, that's
8 fine. But can you set that aside, and as he sits here
9 right now, I'll presume him innocent?

10 VENIREPERSON: If it was any other charge
11 besides sexual and especially against a child, probably.
12 I'd always be innocent until completely proven guilty,
13 but just because of the charge.

14 MR. NICKOLS: Okay. Thank you for that.
15 Thank you for sharing.

16 And let me ask you -- we've had cases
17 before, in our experience, where 12 people get seated on
18 a jury, and they've come back the next day and say, Oh,
19 well, I think he's guilty before we even start
20 testimony.

21 That, you know -- that's an enormous
22 expense on taxpayers. It's a problem for everybody. It
23 wastes the time of everyone who's set here, including
24 yourselves. And so if that's the way you feel, tell us.
25 We need to know now.

1 Thank you, Mr. Jacobs.
2 Anybody else feel that way?
3 VENIREPERSON: I do.
4 MR. NICKOLS: Let me open my sheet here.
5 VENIREPERSON: I feel that way.
6 MR. NICKOLS: Ms. Tarver. Okay. Tell me
7 why.
8 VENIREPERSON: I don't know. I have an
9 autistic grandson who cannot talk, and we'll never know,
10 but we think something might have happened at the last
11 autism program that he was in. My grandson cannot talk.
12 We will never know. I'm sorry. This is just creeping
13 me out really, really bad, being here. And just -- I'm
14 freaking out.
15 MR. NICKOLS: Okay. Let me ask you this:
16 If we don't prove him guilty, if we don't prove it
17 beyond a reasonable doubt guilty to you, are you going
18 to find him guilty anyway?
19 VENIREPERSON: I probably will just because
20 of where I am right now. I mean, I just -- this is not
21 a good --
22 MR. NICKOLS: Okay. Thank you, ma'am.
23 Anybody else?
24 Mr. Potter?
25 VENIREPERSON: And I guess, again, because

1 of the nature of the crime, as we've heard, way more
2 cases went unreported. And in my mind, there wasn't any
3 justice for those folks. It's very hard to start out
4 with innocence and not the other way around.

5 MR. NICKOLS: It is hard. I'm asking you
6 to do it because if you were ever seated here for a
7 traffic ticket, a jury would have to give you the same
8 thing. I know that the charge is much harsher, more
9 abhorrent. Nobody likes to do it. And it's a crime
10 that you want to be tough on.

11 VENIREPERSON: It's not just that. It's
12 that the -- just that the victims, particularly young
13 victims, don't really have a good voice to -- to explain
14 what is happening to them.

15 MR. NICKOLS: Okay.

16 VENIREPERSON: They are easily manipulated
17 into keeping silent, as I think the room has shown. And
18 I was held almost (mumbling) impossible to start out to
19 that death row (mumbling).

20 MR. NICKOLS: Okay. So as you sit here
21 right now, even if -- if -- let me ask you this: If we
22 prove to you that this -- that a kid was sexually
23 molested between such and such dates and in such and
24 such county, and it looked like him, and he's got a
25 witness that he's been in Alaska the whole time, you're

1 not going to find that man guilty, right?

2 MR. ALFORD: Your Honor, I object. He's
3 attempting to bind the jury to a specific set of facts.
4 I think it's a problem.

5 THE COURT: Rephrase your question.

6 MR. NICKOLS: Okay. Let me ask you this:
7 Is there a situation in your mind of how a charge of
8 this would come about where you could find somebody not
9 guilty, or are you going to find somebody guilty just
10 based on the charge alone?

11 VENIREPERSON: So the answer to that
12 question would be that it's possible to find somebody
13 not guilty, which the question you asked originally, I
14 believe, was whether or not you would start out with the
15 presumption of innocence. And in this case, the answer
16 to that would be no.

17 MR. NICKOLS: Okay. Thank you, sir.

18 Who else? Anybody else?

19 Thank y'all for sharing.

20 The Fifth Amendment, everybody's seen the
21 TV show where somebody says, "I'm going to take the
22 Fifth."

23 And I imagine a lot of you feel and my
24 mother would feel, who I love very much, If I were
25 accused of a crime, wild horses couldn't keep me off

APPENDIX E

Trial Counsel ask's for a definitive" answer from Mr. Brookins on his reply of
"probably."

RR2, 104-105

1 VENIREPERSON: Yes, I am.

2 MR. ALFORD: I'm sorry. I didn't mean to
3 put you on the spot. Can -- you cannot give him a fair
4 trial?

5 VENIREPERSON: No. I'm being very honest
6 with you now.

7 MR. ALFORD: Knowing that he's being
8 accused on multiple occasions?

9 VENIREPERSON: Right.

10 MR. ALFORD: I appreciate your honesty.

11 VENIREPERSON: I'm just being honest with
12 you.

13 MR. ALFORD: I appreciate that. And,
14 again, that -- that's why we're here, to answer -- to
15 ask these questions.

16 Is it Mr. Brookins? Can you stand up for
17 me, please, ma'am? I appreciate it. What -- what's
18 your -- what do you think.

19 VENIREPERSON: I probably couldn't give him
20 a --

21 THE COURT: I can't hear you, ma'am.

22 VENIREPERSON: I probably couldn't give him
23 a fair trial.

24 MR. ALFORD: Well, I understand. Let me --
25 let me ask you this because, like I say, we have to have

1 a definitive answer. I'm not trying to -- I'm not
2 trying to back you in a corner. But if I had to ask you
3 a point blank can you give him a fair trial, can you?

4 VENIREPERSON: Not of multiple --

5 MR. ALFORD: You cannot?

6 VENIREPERSON: No.

7 MR. ALFORD: I appreciate your honesty.

8 Thank you.

9 I mean, this -- again, this is important.
10 So if you have an issue, if you have something you want
11 to talk about -- yes, sir.

12 VENIREPERSON: I won't be able to give him
13 a fair trial based on it being multiple charges.

14 MR. ALFORD: I appreciate that very much.
15 Thank you very much.

16 Anybody else?

17 And, again, this is real important, so if
18 you feel like -- if you feel you're on the border, let's
19 talk about it.

20 Anybody else? Yes, sir.

21 VENIREPERSON: These are multiple charges,
22 not multiple convictions, correct?

23 MR. ALFORD: Correct.

24 VENIREPERSON: Okay. I can --

25 MR. ALFORD: Multiple accusations with one

APPENDIX F

Trial Counsel poses a question and specifically states its for the group.

RR2, 107

1 to a few things that I -- it's just too important, I
2 mean, and I want to go over it, not all of you, but
3 there were a few of you.

4 Mr. Klausing?

5 VENIREPERSON: Yes.

6 MR. ALFORD: And this is a question that
7 I'm asking for the group, so I'll just ask it again. In
8 the event a case does involve child testimony, how do
9 you think a child's testimony compares to an adult's?
10 Do you remember the question?

11 VENIREPERSON: Yes.

12 MR. ALFORD: Okay. And you put: "The
13 child is being fair and reasonable, there's no
14 comparison." What do you mean by "comparison"?

15 VENIREPERSON: Well --

16 MR. ALFORD: Are you saying --

17 VENIREPERSON: It's just under pretence,
18 like I'd have to hear it first.

19 MR. ALFORD: Well, let me ask you this:
20 Knowing you haven't heard any testimony yet, do you feel
21 that a child is more credible, less credible, or as
22 credible as an adult generally?

23 VENIREPERSON: It depends on the
24 personality of the child.

25 MR. ALFORD: Okay. Can you expound on

APPENDIX G)*

Trial Counsel pinnes down several juror's for unequivocal answer's to the question "can you give Jerry a fair trial." But Counsel fails to pinn down

Ms. Tarver.

RR2, 100-103-106

1 two series of acts 30 days apart. You follow me?

2 So my question to you is: Would it be
3 difficult for you to give Jerry a fair trial knowing
4 that he's been accused of this on multiple occasions?

5 VENIREPERSON: Probably not.

6 MR. ALFORD: So you could not give him a --
7 are you saying you cannot give a fair trial?

8 VENIREPERSON: No, I probably could give
9 him a fair trial.

10 MR. ALFORD: You can give him a fair trial?

11 VENIREPERSON: Yes, I could.

12 MR. ALFORD: You can or you --

13 VENIREPERSON: Yes, sir.

14 MR. ALFORD: Okay. I appreciate it.

15 Anybody feel differently? I -- you know,
16 if he's accused -- accused on multiple occasions, I
17 don't know if I can give him a fair trial. Anybody?

18 Yes, sir. I'm sorry. I have to get my
19 cheat sheet again. You are Mr. -- is it Conway?

20 VENIREPERSON: Yes.

21 MR. ALFORD: Number 45? What do you think?

22 VENIREPERSON: Well, just the nature of the
23 offense and multiple accusations --

24 MR. ALFORD: Go ahead.

25 VENIREPERSON: -- make it difficult for me

1 to just be, you know, a fair trial in my mind.

2 MR. ALFORD: I actually -- I appreciate it.

3 VENIREPERSON: That's just the way I feel.

4 MR. ALFORD: And, again, that's -- that's
5 what we want. We don't want you telling us what you
6 think we want to hear.

7 VENIREPERSON: Yeah.

8 MR. ALFORD: So what are you -- are you
9 saying, then, that you could not under those
10 circumstance?

11 VENIREPERSON: I don't think so.

12 MR. ALFORD: Could you give him a fair
13 trial?

14 VENIREPERSON: I don't think so, no.

15 MR. ALFORD: Okay. Thank you. I
16 appreciate your honesty.

17 Anybody else feel the same way? You know,
18 it's just -- if it were one incident, it would be one
19 thing.

20 But, Mr. Smallwood, what do you think?

21 VENIREPERSON: If it happened twice, I
22 don't think I could give him a fair trial.

23 MR. ALFORD: I'm sorry, I couldn't hear
24 you.

25 VENIREPERSON: If it happened twice, I

1 don't think I could give him a fair trial.

2 MR. ALFORD: Can you give him a fair trial?

3 VENIREPERSON: No.

4 MR. ALFORD: Anybody else? I mean, you
5 know, once is -- once is one thing, but when you're
6 talking about multiple -- multiple events, that's
7 another.

8 Mr. -- is it Mr. Bessey?

9 VENIREPERSON: Yes.

10 MR. ALFORD: What do you think?

11 VENIREPERSON: I'm just thinking that it
12 doesn't matter if it's one, three, ten, whatever. One
13 is too many.

14 MR. ALFORD: Okay.

15 VENIREPERSON: You know, so if they can
16 prove that one of them did it -- if he did it three
17 times, four times, I don't care. If they can prove it
18 one time, then that should be enough to convict him.

19 MR. ALFORD: But you understand in this
20 case, the indictment alleges more than one. So in other
21 words, in order for the State to prevail, in order for
22 you to have a guilty verdict, you've got to -- the
23 State's got to prove to you beyond a reasonable doubt
24 that it's happened on more than one occasion. You
25 follow me?

1 VENIREPERSON: Okay.

2 MR. ALFORD: So my question to you, same as
3 over here is: Is it just doesn't make any difference to
4 you, I mean, whether you can give him a fair trial if
5 you understand from the get-go that he's being accused
6 of this on more than one occasion?

7 VENIREPERSON: No.

8 MR. ALFORD: You can still give him a fair
9 trial?

10 VENIREPERSON: Yeah.

11 MR. ALFORD: Okay.

12 VENIREPERSON: I'm just saying, though,
13 that, I mean, if they're going to have to prove it, that
14 it happened on multiple occasions in the times that
15 they're specifying.

16 MR. ALFORD: Right, right.

17 VENIREPERSON: I can.

18 MR. ALFORD: So but you could still give
19 him a fair trial?

20 VENIREPERSON: Yeah.

21 MR. ALFORD: Okay. Anybody else with their
22 hand up over here?

23 VENIREPERSON: I don't -- I can't. I would
24 not.

25 MR. ALFORD: And you are Ms. Karch?

1 indictment.

2 VENIREPERSON: I can give him a fair trial.

3 MR. ALFORD: Okay. Thank you. I
4 appreciate it. Thank you very much.

5 If you're not sure, if my question was
6 vague, just raise your hand. We'll be glad to get to
7 you.

8 Anybody else? Yes, sir.

9 VENIREPERSON: I don't think I can either.

10 MR. ALFORD: You're Mr. Gamez?

11 VENIREPERSON: Yes, sir.

12 MR. ALFORD: Well, okay. Let me just --
13 again, I have to ask you point blank. Given the
14 hypothetical I gave you about the multiple accusations,
15 can you give him a fair trial?

16 VENIREPERSON: No, I can't.

17 MR. ALFORD: Thank you.

18 Again, I just want to say I appreciate your
19 honesty, that that's why we have all of you here and
20 only 12 seats up there. So if you have something you
21 want to say, let's talk about it.

22 Anybody else? I don't want to miss
23 anybody, but I want to move on. So anybody?

24 Okay. Let's talk about child witnesses.

25 There were a few of you on your questionnaire that admit

APPENDIX H

Trial Counsel and the Court as a discussion on the fact that "this proceeding/trial actually started two weeks ago, but a mistrial was declared due to a juror admitting bias, and motion for continuance was also denied. RR2, 07.

RR2, 04-06, 08.

1 need to take up at this time?

2 MR. ALFORD: Your Honor, we filed -- we had
3 some hearings at the prior trial. I think we're just
4 going to carry those. I'll carry those forward, if the
5 Court will allow us to, with the trial. And, again, the
6 motions that we filed were in the first cause that would
7 be the aggravated assault.

8 We're going to ask, number one, that the
9 Court will transfer those motions to this cause, the
10 second cause, the one we're trying today, and also to
11 carry forward any rulings on that first trial -- with
12 the trial.

13 THE COURT: I'll do that.

14 And for the record, we started this trial,
15 I guess, two weeks ago and selected a jury, and the
16 Court had to declare a mistrial at your request,
17 Counsel, because a juror informed the Court on the first
18 day testimony was slated to begin that she could not be
19 fair because she was biased. And because of that, we
20 declared a mistrial. But I will consider all the
21 motions that were previously heard in this matter as
22 applied.

23 MR. ALFORD: We have nothing further.

24 THE COURT: Does the State have anything
25 further?

1 JURY VOIR DIRE PROCEEDINGS

2 MONDAY, APRIL 1, 2013

3 (Open court, defendant present, no venire panel.)

4 THE COURT: Both sides ready in the case of
5 The State of Texas versus Jerry Lee Canfield?

6 MR. NICKOLS: Yes, Your Honor.

7 THE COURT: Is the Defense?

8 MR. ALFORD: Your Honor, let the record
9 reflect that the Defense has filed a Motion for
10 Continuance in this case. The basis for -- several
11 bases for the motion. And the main basis is that my
12 expert, Dr. Flynn, who is an integral part of this, is
13 testifying in two different counties this week. He's
14 testifying in Dallas County and also in Palo Pinto
15 County.16 My intention is to call him as an expert in
17 the guilt/innocence phase and, if necessary, the
18 punishment phase. I'm going to need him to make two
19 trips to Fort Worth. And given his schedule, my Motion
20 for Continuance, which stated in the motion, since the
21 motion was filed, something else has come up. I just
22 found out last week that my client was in the hospital.
23 He had surgery. And as part of that procedure, they did
24 a biopsy on his liver. I'm not sure the extent of that.
25 I also would ask for a continuance to get the result of

1 that because that could play a part in -- if he's found
2 guilty, could play a part in punishment, as far as what
3 a jury would give him for punishment, depending on the
4 result of this, that was not stated in the motion
5 because that happened after I found out about that.
6 Those are especially the two bases for my motions.

7 THE COURT: Let me just ask you this
8 question. Your client is here today. Is he physically
9 able at this point in time to withstand being in court
10 and participate in court this week?

11 MR. ALFORD: He is.

12 THE COURT: With regard to Dr. Flynn, have
13 you had a chance to talk with him this morning?

14 MR. ALFORD: I did. I talked with him over
15 the lunch break. He's going to try to accommodate me.
16 He already made commitments to these other two counties.
17 He's going to do everything he can to try to accommodate
18 me. I can't tell you for certain.

19 Going back to my first issue is --
20 physically able. It's evidence that I think a jury in
21 punishment, if we get that far, may want to consider in
22 deciding if there's something really wrong here. That
23 may be something they want to consider. But he is in
24 good physical condition to the best of my knowledge.

25 THE COURT: Do you have any idea when the

1 ~~Biopsy results will return~~ -

2 MR. ALFORD: ~~They said two weeks.~~

3 THE COURT: ~~May be available?~~

4 I'm going to deny your Motion for
5 ~~Continuance.~~

6 Let me continue to explore this question of
7 Dr. Flynn's availability. He is a witness in Palo Pinto
8 County. Do you know on what day he has to be there, or
9 did he say?

10 MR. ALFORD: They said Tuesday or
11 Wednesday. And I'm thinking I'm going to need Dr. Flynn
12 probably Wednesday. I'm assuming, if the State finishes
13 their case on Tuesday, I would probably want him on
14 Wednesday. And it's a -- he's not sure if he's in
15 Tuesday or Wednesday in Palo Pinto. Again, he's going
16 to try to accommodate me if he can.

17 THE COURT: And what day did he indicate he
18 would have to be in Dallas probably?

19 MR. ALFORD: Probably later in the week,
20 either Wednesday or Thursday.

21 THE COURT: Bring it to my attention if you
22 have a problem.

23 I'm going to deny the Motion for
24 Continuance at this time.

25 Are there any other pretrial matters we

1 MR. NICKOLS: Nothing from the State,
2 Judge.

3 THE COURT: Both sides are ready for the
4 jury?

5 MR. NICKOLS: State's ready.

6 MR. ALFORD: Subject to our Motion for
7 Continuance, yes, sir, we are ready, Your Honor.

8 THE COURT: Let's bring the jury in.

9 Hold on. Let's go ahead -- hold on one
10 second. Thank you.

11 Let's go ahead and arraign him again.
12 Let's do that outside the presence of the jury.

13 Sir, you are Jerry Lee Canfield?

14 THE DEFENDANT: Yes.

15 THE COURT: You here with your Counsel,
16 Mr. Barry Alford, who has been your lawyer for some
17 time?

18 THE DEFENDANT: Yes.

19 THE COURT: At this time, I'll ask the
20 district attorney to read the charge and the defendant
21 to enter his plea.

22 (Indictment read.)

23 THE COURT: You may plead guilty or not
24 guilty. What is your plea?

25 THE DEFENDANT: Not guilty.

APPENDIX I

The state (Mr. Nickols) instructs the venire panel that "we must have a yes or no." RR2, 27.

1 your verdict here this week?

2 VENIREPERSON: I don't believe so.

3 MR. NICKOLS: I'm glad you said that first.
4 You said, "I don't believe so." And I know what you
5 mean. But for the record, we have to get an absolute
6 "yes" or "no." And so let me ask you this: Is there
7 anything about that, because of what your friend went
8 through, you're not going to find this guy guilty,
9 right?

10 VENIREPERSON: No.

11 MR. NICKOLS: Okay. Thank you.

12 Who else?

13 Ms. Williams?

14 VENIREPERSON: Yes. I have a friend who
15 was raped as a teenage girl.

16 THE COURT: I can't hear you, Ms. Williams.

17 VENIREPERSON: I had a friend who was raped
18 as a teenager.

19 MR. NICKOLS: And do you know who the
20 perpetrator was to her?

21 VENIREPERSON: I do not.

22 MR. NICKOLS: Do you know if she reported
23 it?

24 VENIREPERSON: She did.

25 MR. NICKOLS: Okay. Was there a criminal

APPENDIX J

Trial Counsel ask's venire panel "is there anyone here -- I know this question has already been asked, and I know a lot of you have already answered it, but I just want to make sure. Is there anything about this particular offense for whatever reason, this case is not for you." RR2, 115-117.

1 interpretation and how they present it.

2 MR. ALFORD: Fair enough. Thank you.

3 Mr. Smallwood, or is it Ms. Smallwood?

4 Mr. Smallwood, you said "not sure." Do you
5 know why?

6 VENIREPERSON: I guess it would be the
7 same.

8 MR. ALFORD: The same? Okay. Thank you.

9 Ms. Ramirez? My bad. Never mind. Strike
10 that.

11 Mr. Conway?

12 VENIREPERSON: Right here.

13 MR. ALFORD: Okay. You said "very tough"
14 to that question. Do you remember? What do you mean by
15 that?

16 VENIREPERSON: Well, just the -- for both
17 of them together, just adults and children. I'd say
18 it's harder for the child to, you know, be strong enough
19 to...

20 MR. ALFORD: I understand what you're
21 saying. Thank you. I appreciate it.

22 Is there anyone here -- I know this
23 question has already been asked, and I know a lot of you
24 have already answered it, but I just want to make sure.
25 Is there anything about this particular offense, for

1 whatever reason, any act that for this particular type
2 of offense that you'd say, I just don't know if I could
3 be the right kind of person for this jury? That case or
4 an assault, great; but this is just not -- other than
5 those that we've already talked to who said they cannot
6 for whatever reason -- it's just not the right kind of
7 case for me?

8 Anybody? Anybody at all?

9 Ms. Williams?

10 VENIREPERSON: As a grandmother of two
11 young children, it's very difficult for me to imagine
12 how I would feel if something like that occurred to my
13 grandchildren. And it makes it -- I -- I have to admit
14 that it makes me look at someone perhaps with a more
15 negative eye that, if they've been accused, what could
16 have occurred that cause someone to accuse them?

17 But I also know listening over here that a
18 child doesn't have the discernment oftentimes to tell
19 right from wrong, or a child often doesn't have the
20 ability to withstand manipulation or a desire to please,
21 a desire to say what they think people want to hear. So
22 it's just a very difficult situation no matter how you
23 look at it.

24 MR. ALFORD: Oh, I agree.

25 So let me ask you this: Given everything

1 you've heard today, given that you understand that
2 someone's been accused of this on multiple occasions,
3 given that you may not hear any testimony from our side
4 of the table, given all the -- everything, and given
5 your life experiences, can you give Jerry a fair trial?
6 And if you can't, it's okay.

7 VENIREPERSON: Yes, I would do my best to
8 do my duty as a juror.

9 MR. ALFORD: Can you give him a fair trial?

10 VENIREPERSON: Yes.

11 MR. ALFORD: I appreciate that.

12 Anybody else before we move on? I just
13 don't know if this is the right kind of case for me.

14 I'll talk a little bit about punishment.

15 We've talked about -- you know, we've talked about the
16 range of punishment is 25 to life. That's a long range.

17 Is there anyone here who would say, Given
18 the fact that he's been accused on multiple occasions of
19 this, I just know don't if can consider 25 years, I just
20 don't know if I can do it?

21 Anybody? It's just -- it's too low for me.

22 VENIREPERSON: I've said that that's a lot
23 of years to put on somebody.

24 MR. ALFORD: I understand.

25 VENIREPERSON: I'd have to have 100 percent

No. 21-6772

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY LEE CANFIELD — PETITIONER
(Your Name)

VS.

BOBBY LUMPKIN, DIRECTOR, TDCJ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States Supreme Court No. 21-6772 (writ of certiorari)

United States Court of Appeals for the Fifth Circuit No. 18-10431

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____, or _____

a copy of the order of appointment is appended.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Jerry Lee Canfield, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Self-employment	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Income from real property (such as rental income)	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Interest and dividends	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Gifts	\$ <u>80.00</u>	\$ <u>00.00</u>	\$ <u>80.00</u>	\$ <u>00.00</u>
Alimony	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Child Support	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Disability (such as social security, insurance payments)	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Unemployment payments	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Public-assistance (such as welfare)	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Other (specify): <u>NONE</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>	\$ <u>00.00</u>
Total monthly income:	\$ <u>80.00</u>	\$ <u>00.00</u>	\$ <u>80.00</u>	\$ <u>00.00</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ 00.00
N/A	N/A	N/A	\$ 00.00
N/A	N/A	N/A	\$ 00.00

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ 00.00
N/A	N/A	N/A	\$ 00.00
N/A	N/A	N/A	\$ 00.00

4. How much cash do you and your spouse have? \$ _____
 Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
INMATE TRUST FUND	\$ _____	\$ 00.00
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
 Value _____

Other real estate
 Value _____

Motor Vehicle #1
 Year, make & model _____
 Value _____

Motor Vehicle #2
 Year, make & model _____
 Value _____

Other assets
 Description _____
 Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ 00.00	\$ 00.00
N/A	\$ 00.00	\$ 00.00
N/A	\$ 00.00	\$ 00.00

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 00.00	\$ 00.00
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 20.00	\$ 00.00
Home maintenance (repairs and upkeep)	\$ 00.00	\$ 00.00
Food	\$ 40.00	\$ 00.00
Clothing	\$ 10.00	\$ 00.00
Laundry and dry-cleaning	\$ 00.00	\$ 00.00
Medical and dental expenses	\$ 10.00	\$ 10.00

	You	Your spouse
Transportation (not including motor vehicle payments)	\$00.00	\$00.00
Recreation, entertainment, newspapers, magazines, etc.	\$00.00	\$00.00
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$00.00	\$00.00
Life	\$00.00	\$00.00
Health	\$00.00	\$00.00
Motor Vehicle	\$00.00	\$00.00
Other: <u>NONE</u>	\$00.00	\$00.00
Taxes (not deducted from wages or included in mortgage payments)		
(specify) <u>NONE</u>	\$00.00	\$00.00
Installment payments		
Motor Vehicle	\$00.00	\$00.00
Credit card(s)	\$00.00	\$00.00
Department store(s)	\$00.00	\$00.00
Other: <u>NONE</u>	\$00.00	\$00.00
Alimony, maintenance, and support paid to others	\$00.00	\$00.00
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$00.00	\$00.00
Other (specify) <u>NONE</u>	\$00.00	\$00.00
Total monthly expenses:	\$80.00	\$00.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____ N/A _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____ N/A _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am an inmate confined in an institution, unemployed, and only receive gifts from my mother to pay for expenses in the institution.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 29th, 2022

Az Z. Tawfiq
(Signature)

Jerry Lee Canfield
TDCJ# 01848978 - Coffield Unit
2661 FM 2054
Tennessee Colony, Texas 75884-5000

June 29, 2022

Supreme Court of the
United States
Attn: Clerk of the Court
Hon., Scott Harris
1 First Street, N.E.
Washington, DC 20543

RE: Canfield Vs. Lumpkin, Cause No. 21-6772.

Dear Clerk of the Court:

Greetings! Enclosed is the Petitioner's Motion for Rehearing, Certificate of Service, Certificate of Compliance, Certification of Counsel, and Declaration of Inmate Filing with Informa Pauperis to be filed in this Honorable Court.

Thank you for all your time and help within my request. Please notify me upon filing and rulings at hand at your earliest convenience.

Sincerely,



Jerry Lee Canfield
Pro se Litigant.

Certified Mail #7020-0640-0000-4619-4683

Return Receipt #9590-9402-5949-0062-5967-28

CC: file

JLC: JLC

