

AUG 19 2021

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No. _____

21-7049

IN THE

SUPREME COURT OF THE UNITED STATES

ARTHUR R. HOLLOWAY, JR. — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FIFTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

ARTHUR R. HOLLOWAY, JR., TDCJ# 02037836
(Your Name)

Telford Oaks, 3899 Hwy. 98
(Address)

New Boston, Texas, 75570
(City, State, Zip Code)

(903) 638-3171
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

(1.) Whether the Fifth Circuit's failure to take into consideration that "cause" exists for Holloway's state habeas application being denied "conflicts" with the Supreme Court decision in *Socher v. Florida*, 504 U.S. 507, 113 S.Ct. 2114 (1992).

(2.) Whether the Fifth Circuit's decision not to recall its mandate and stay its mandate pending Holloway files a petition for panel rehearing or rehearing en banc in accordance with Rules 35 and 40 of the Federal Rules of Appellate Procedure (FRAP), "conflicts" with the Supreme Court decision in *Bell v. Thompson*, 545 U.S. 794 (2005) if "cause" exists for Holloway's failure to timely stay the mandate.

(3.) Whether Fifth Circuit Judge Andrew S. Oldham's decision to act "alone" on Petitioner's Certificate of Appealability (COA), "conflicts" with the Supreme Court decision in *Hohn v. United States*, 524 U.S. 245 (1998), which requires decisions on COAs be made by the entire court.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

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

RELATED CASES

Ex parte Holloway, No. WR-89-612-01, Texas Court of Criminal Appeals. Judgment entered March 27, 2021.
Holloway v. Lumpkin, No. 4:19-cv-01711, U.S. District Court for the Southern District of Texas. Judgment entered June 23, 2021.

Holloway v. Lumpkin, No. 20-20357, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 28, 2021.

Holloway v. Lumpkin, No. 20-20357, U.S. Court of Appeals for the Fifth Circuit. Mandate issued June 21, 2021.

Holloway v. Lumpkin, No. 20-20357, U.S. Court of Appeals for the Fifth Circuit. Order granting extension of time to file a motion for reconsideration and petition for rehearing en banc entered June 29, 2021.

Holloway v. Lumpkin, No. 20-20357, U.S. Court of Appeals for the Fifth Circuit. Order denying motion to recall mandate; order denying motion to stay mandate entered June 29, 2021.

Holloway v. Lumpkin, No. 20-20357, U.S. Court of Appeals for the Fifth Circuit. Order denying motion for reconsideration and petition for rehearing en banc entered July 26, 2021.

TABLE OF CONTENTS

OPINIONS BELOW	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	5.
REASONS FOR GRANTING THE WRIT	6-20.
CONCLUSION.....	21.

INDEX TO APPENDICES

APPENDIX A	<i>Final Judgment dismissing Petitioner Arthur R. Holloway, Jr. ("Holloway") Federal Habeas Corpus Petition on June 13, 2020; see also Affidavit Regarding Memorandum and Order of the United States District Court in Houston (Appx. A-1).</i>
APPENDIX B	<i>Order denying Holloway's Certificate of Appealability on May 28, 2021; Certificate as a true copy of COA denied and issuance of mandate on June 21, 2021.</i>
APPENDIX C	<i>Order denying motion to recall mandate; Order denying motion to stay mandate pending disposition of a petition for rehearing en banc and for a petition for a writ of certiorari on June 29, 2021. Granting motion for reconsideration on June 29, 2021.</i>
APPENDIX D	<i>Order denying motion for reconsideration and rehearing en banc on July 26, 2021.</i>
APPENDIX E	<i>Affidavits of Impediment Regarding State Habeas Courts Judgment. (ECF Nos. 22, 16, 20, 22). See Sup. Ct. R. 14(c)(2)(vi).</i>
APPENDIX F	(END)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Arizona v. Youngblood</i> , 488 U.S. 58 (1988)	F.N. 5.
<i>Bell v. Thompson</i> , 545 U.S. 806 (2005)	17, 18.
<i>Borefoot v. Estelle</i> , 463 U.S. 880, 103 S.Ct. 3383 (1983)	20.
<i>Brady v. Maryland</i> , 393 U.S. 83, 87 (1963)	11, 14, 15.
<i>California v. Trombetta</i> , 467 U.S. 483-84 (1984)	F.N. 4.
<i>Clark v. Collins</i> , 956 F.2d 68 (5th Cir. 1992)	7.
<i>East v. Scott</i> , 55 F.3d 996 (5th Cir. 1995)	9.
<i>Ex parte Blacklock</i> , 191 S.W.3d 718 (Tex. Crim. App. 2006)	6.
<i>Ex parte Jones</i> , 97 S.W.3d 586 (Tex. Crim. App. 2003)	F.N. 7.
<i>Ex parte Murray</i> , 943 S.W.2d 461, 466 (Tex. Crim. App. 1996)	7.
<i>Ex parte Staley</i> , 160 S.W.3d 63 (Tex. Crim. App. 2005)	F.N. 10, 11.
<i>Hohn v. United States</i> , 524 U.S. 245 (1988)	20.
<i>Houston v. Lack</i> , 487 U.S. 270-71 (1988)	20.
<i>Keeney v. Tomajo Reyes</i> , 504 U.S. 1113 S.Ct. 1715 (1992)	20, 21.
<i>Kyles v. Whitley</i> , 514 U.S. at 438-40 (1995)	14, 15.
<i>Lamare v. Lapsley</i> , 40 F.3d 205, 257 (5th Cir. 1994)	F.N. 3.
<i>Müller-Et v. Cockrell</i> , 537 U.S. 303, 307 (2000)	16, 19.

STATUTES AND RULES

Article 11.07, Texas Code of Criminal Procedure	9.
Article 11.071, Texas Code of Criminal Procedure	6.
Rule 73, of the Texas Rules of Appellate Procedure	9.
Rule 37(a)(1), Federal Rule of Appellate Procedure	19.
Rule 35, Federal Rules of Appellate Procedure	18.
Rule 40(a)(1), Federal Rules of Appellate Procedure	17, 18.
Rule 41(b), Federal Rules of Appellate Procedure	14, 15.
28 U.S.C. § 2253(c)	18.
28 U.S.C. § 2254	18.

OTHER (Additional Cases That's Involved In This Case)

<i>Muller v. Johnson</i> , 800 F.3d 374, 381 (5th Cir. 2004)	9.
<i>Rector v. Johnson</i> , 130 F.3d 551, 560 (5th Cir. 1997)	13, 14.
<i>Socher v. Florida</i> , 504 U.S. 587, 113 S.Ct. 2114 (1992)	6, 10, 16, 18.
<i>Strickler v. Greene</i> , 537 U.S. 363, 381-83, 119 S.Ct. 1936 (1999)	10, 11, 15, 16.
<i>United States v. Agurs</i> , 427 U.S. 97, 107-11 (1976)	13, 13.
<i>United States v. Taylor</i> , 933 F.2d 307 (5th Cir. 1991)	6.
<i>Wickware v. Trubler</i> , 404 Fed. Appx. 856, 2010 U.S. App. LEXIS 35465 (5th Cir. 2012)	16.
<i>Wood v. Bartholomew</i> , 516 U.S. 1, 116 S.Ct. 7 (1995)	16.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B 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 A 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 E 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 N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 May 28, 2021.

☐ 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: July 26, 2021, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Dec 23, 2020.
A copy of that decision appears at Appendix E.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional provisions and statutes are involved in this case:

Articles 11.07 and 11.071 of the Texas Code of Criminal Procedure

Under Articles 11.07 and 11.071 of the Texas Code of Criminal Procedure, the writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed by anyone having a person in his custody, or under his restraint. The order commands that such person be... produced, at a time and place named in the writ and a showing made of why such person is held in custody or under restraint.

Rule 73 of the Texas Rules of Appellate Procedure

Under Rule 73.1 of the Texas Rules of Appellate Procedure, "a state habeas... application must be made in the form prescribed by the Texas Court of Criminal Appeals."

Rule 27.4(c) of the Federal Rules of Appellate Procedure

Under Rule 27.4(c) of the Federal Rules of Appellate Procedure, "a single circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding alone."

Rule 35 of the Federal Rules of Appellate Procedure

Under Rule 35 of the Federal Rules of Appellate Procedure, "an en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc... consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."

Rule 40(a)(1) of the Federal Rules of Appellate Procedure

Under Rule 40(a)(1) of the Federal Rules of Appellate Procedure, "unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment."

Rule 41(c) of the Federal Rules of Appellate Procedure

Under Rule 41(b) of the Federal Rules of Appellate Procedure, "the court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time."

28 U.S.C. § 2253(c)

Under 28 U.S.C. § 2253(c), "the AEDPA carries forward the requirement for state prisoners to obtain permission to appeal the District Court's decision. To appeal a District Court's decision, the petitioner must make a substantial showing of his entitlement to relief. If a petitioner can raise an issue which is 'debatable among jurists of reason,' a COA should be granted."

28 U.S.C. § 2254

The federal writ of habeas corpus affords an important, but limited... examination of a state inmate's conviction and sentence. The AEDPA, codified as amended at 28 U.S.C. § 2254(c), imposes a highly deferential standard for... evaluating state court rulings and demands that state-court decisions be given the benefit of the doubt; it also codifies the traditional principles of... finality, comity, and federalism that underlie the limited scope of federal habeas review.

(END)

STATEMENT OF THE CASE

The State of Texas ("Texas") prosecuted the Petitioner Arthur R. Holloway, Jr. ("Holloway") for the offense of capital murder. (I.C.R. at 29). Holloway entered a plea of ~~not~~ guilty to the charged offense. (I.C.R. at 3). The jury found Holloway guilty of capital murder. (I.C.R. at 5). The judge sentenced Holloway to confinement for life in the Texas Department of Criminal Justice - Institutional Division. (I.C.R. at 6). Notice of Appeal was given following sentence on November 12, 2015. (I.C.R. at 849-50). The trial court's certification of Holloway's right to appeal was filed on November 11, 2015. (I.C.R. at 803).

The Fourteenth District Court of Appeals in Houston, Texas affirmed Holloway's judgment. Holloway v. State, No. 14-15-00773-CR, 2017 WL 1181315 (Tex. App. - Houston [14th Dist.] Mar 30, 2017). Holloway filed a Petition For Discretionary Review (PDR) with the Texas Court of Criminal Appeals (TCCA) in Austin, Texas, but the TCCA refused Holloway's PDR. Holloway v. State, No. AB-0310-17 (Tex. Crim. App. Nov. 22, 2017).

Holloway challenged his conviction by way of a state habeas corpus application ("application") which the TCCA denied without written order or hearing on the findings of the trial court. (SHCA at 11, 103-04). *Ex parte Holloway*, No. WR-89,613-01 (Tex. Crim. App. Nov. 27, 2019).

Holloway filed a federal habeas petition for a writ of habeas corpus on April 29, 2019. (ECF No. 1 at 11). Holloway filed an amended petition on June 17, 2019. (ECF No. 11). On June 23, 2020, Holloway's amended petition was denied. (ECF Nos. 68, 69). Notice of Appeal was given on July 05, 2020. (ECF No. 72). Permission to proceed on appeal in forma pauperis (IFP) was granted on July 21, 2020. (ECF No. 78). The same date, the USDC denied Holloway a COA sua sponte. (ECF Nos. 68, 69).

The Fifth Circuit Court of Appeals in New Orleans, Louisiana ("Fifth Circuit") denied Holloway's COA on May 28, 2021. (Appendix B). The Fifth Circuit's mandate mandating the denial of Holloway's COA was issued on June 21, 2021. (Appendix C). Holloway's motion to recall mandate and stay of mandate pending petition for hearing or rehearing en banc and/or petition for a writ of certiorari was denied on June 29, 2021. (Appendix C). Holloway's motion for an extension of time to file a motion for reconsideration and petition for rehearing en banc was granted on June 29, 2021. (Appendix C, at 3). On July 26, 2021, Holloway's motion for reconsideration and petition for rehearing en banc was denied. (Appendix D).

(ENA)

REASONS FOR GRANTING THE PETITION

(I)

The Fifth Circuit's failure to take into consideration that Holloway's state habeas application, in which the state habeas (SHCP at 11, 102-04) and federal habeas court (ECF Nos. 68, 69) based their decisions on, was forged and therefore dismissed on procedural grounds in... accordance with *Ex parte Staley*, 100 S.W.3d 63 (Tex. Crim. App. 2005), "conflicts" with the Supreme Court decision in *Sacher v. Florida*, 504 U.S. 507, 114 S.Ct. 3114 (1992). ("Fifth Circuit's failure")

The Fifth Circuit's failure (Appendix B) "conflicts" with the Supreme Court decision in *Sacher v. Florida*, supra, because the Petitioner Arthur R. Holloway, Jr. ("Holloway"), failed to meet the requirements of *Ex parte Staley*, supra, "for reasons external to Holloway" (ECF Nos. 02, 30, 51, 52), which requires in pertinent part that: "under both Articles 11.07 and 11.071 of the Texas Code of Criminal Procedure (TCCP), an original or subsequent [application] for a writ of habeas corpus must state specific particularized facts which, if proven true, would entitle the applicant to habeas relief. See, *Ex parte Staley*, supra. These facts must be [sufficient] to enable a court to determine from the [face] of the [application] itself, whether the [application] merits further inquiry. Id. If the [application] does not contain sufficient facts establishing an applicant's claim is cognizable, the merits of his claim will not be reached." Id.

Holloway failed to meet the requirements of *Brady* (SHCP at 102-04) on the [face] of the [application] in accordance with *Ex parte Staley*, supra ("Ex parte Staley"), because on October 22, 2018, Holloway filed his [application] on an out-of-date (2014) application, which was provided to Holloway by Prison Law Library Officials ("Law Library") (ECF Nos. 02, 30, 51, 52). *Wickware v. Thaler*, 404 Fed. Appx. 850, 2010 U.S. App. LEXIS 35465 (5th Cir. 2010) ("State prisoner's habeas petition under 38 U.S.C. § 2854 is timely filed despite being provided an out-of-date state application under 7AAPP 73.1").

Law Library [failed] to provide Holloway with the [proper] 2018 State Habeas Application for ("proper application") to enable Holloway to comply with Rule 73.1 of the Texas Rules of Appellate Procedure ("TRAP"), which requires "Holloway to submit... Holloway's claim [is] on the proper application," despite Holloway's requests for the proper application (ECF No. 02 at Attachment 9). See, Rule 73.1, TRAP; *Wickware v. Thaler*, supra.

Rather than providing Holloway the proper application, Law Library, as stated above, provided Holloway an out-of-date (2014) application, which would have been immediately dismissed [without] prejudice to Holloway's ability to refile his Brady claim on the proper application (ECF Nos. 02, 30, 51). Id.; *Ex parte Blacklock*, 191 S.W.3d 718 (Tex. Crim. App. 2006).

The 2014 application was allegedly received by the Harris County District Clerk's Office, on October 26, 2018, four days [after] Holloway disclosed the 2014 application to Law Library for mailing (ECF No. 20 at 2, Exhibit B-1). Id.

While Holloway's out-of-date application was pending, Holloway attempted to [supplement] the 2014 application with the [proper application] (ECF No. 23 at Attachment B) which reflect a sufficient Brady claim (ECF No. 23, supra), that is, the same Brady claim Holloway presented in the USDC (ECF No. 53) (ECF No. 23, supra), since supplementing the 2014 application was appropriate under Rule 73, TRAP at any time. See, *Clark v. Collins*, 956 F.2d 68 (5th Cir. 1993); see also Rule 73, TRAP. However the Texas Court of Criminal Appeals ("TCCA") immediately returned Holloway's supplemental application with a notice informing Holloway Holloway's 2014 application was still pending in the trial court (ECF No. 23, supra). Id. Thereafter, Holloway mailed the proper... application to the trial court which was unknown whether the proper application had been received by the trial court (ECF No. 23, supra). Id.

Because Holloway did not receive a response from the trial court regarding receipt of the supplemental 2018 application (ECF No. 23, supra), Holloway was under the impression the proper application had been received and filed (ECF No. 23, supra). Id.

Because a no response was [suspicious] to Holloway Holloway filed a Declaration and Affidavit warning the TCCA to beware of forged and/or perjured materials because prison talk that in similar circumstances offenders legal documents were possibly forged (ECF No. 20 supra at Attachment A).¹ See, *Ex parte Jones*, 97 S.W.3d 586 (Tex. Crim. App. 2003).

Because Holloway notified the TCCA and alerted the TCCA of possible forgery and/or perjured material in the 2014 application (ECF No. 23, supra), it was the TCCA's obligation to contact the trial court and inform the trial court to look for forged and perjured material. Id.

On December 20, 2018, the State filed their Original Answer, which was received by Holloway on January 03, 2019 (ECF No. 20 at 2, Exhibit B-2). Id. Forgery and perjury [was] detected in the State's Original Answer by Holloway, regarding Holloway's Brady claim because "the State stated the name 'Morton Taylor' ('Taylor')"

1. In accordance with *Ex parte Jones*, 97 S.W.3d 586 (Tex. Crim. App. 2003), prisoners are required to contact the TCCA and inform the TCCA when forgery or perjury has [possibly] occurred. From that point the TCCA is [required] to contact the trial court and inform the trial court to beware of forgery and perjury.

throughout their Original Answer, and stated Holloway [seemed] to be making a Brady claim, and Holloway's allegations were false" (ECF No. 30 at 3, supra at ¹⁴3-4). *Id.*

To the contrary, Holloway argued in opposition that Holloway used the name Marlon Turner ("Turner") [not] Taylor (ECF No. 30 at 6 of 16, ¹⁴*7). *Id.* Holloway argued that Holloway specified Holloway's claim was a Brady claim because Holloway argued that: "Detective Hector Garcia ("Garcia") gave testimony that the cellphone Garcia suppressed [possibly] belonged to Turner [not] Taylor (Ex. R. at 113-139) (ECF No. 30, supra). *Id.*

Holloway alleged that "forgery was detected because Garcia and Turner [not] Garcia and Taylor's identities were already established because their last names ("Garcia and Turner") was placed inside of parentheses on the [face] of grounds one and three of the [application], and correctly spelled in both the [application] and corresponding memorandum" (ECF No. 30 at 6-7, ¹⁴*8 and 1). *Id.*

Because the trial court had Holloway's 3014 application (ECF No. 30) and... supplemental 3018 application (ECF No. 33, supra) and memorandum and the State's Original Answer (ECF No. 30 at 3, supra), hand-and-hand, the trial court was required to look for forged and perjured material once the TCCA alerted the trial court to beware of impediment (ECF No. 30, supra); and thus, should have seen that Turner's name had been [forged] to "Taylor," and Holloway's allegations that "Garcia gave testimony the suppressed cellphone possibly belonged to Turner" was forged to facts that [seemed] to allege a Brady claim (ECF No. 30 at 3, supra). *Id.*

Because the State's Original Answer was in response to forged and/or perjured facts in the application (ECF No. 30), said impediment rendered Holloway's ability to "fully" and "fairly" develop Holloway's Brady claim (ECF No. 50) futile... because said impediment "tainted" the entire state habeas proceeding (ECF No. 03, 03 at Attachment A, 30, 50). *Id.* See *Keeney v. Tomajo-Reyes*, 504 U.S. 1, 113 S. Ct. 1715 (1992).

However, Holloway filed [another] affidavit, in good faith to satisfy diligence, alerting the TCCA that the name Turner had been changed to Taylor and the facts in Holloway's application was a fabrication as a result of impediment (ECF No. 30 at 3, Exhibit C-1) (ECF No. 30). *Id.*

Before the TCCA could consider Holloway's affidavit, Holloway received a copy of the TCCA's white card denial denying Holloway's [application] (SHCA at 11). *Id.*

2. The facts must be [sufficient] to enable the court to make its determination from the [face] of the [application]. See, *Ex parte Staley*, 160 S.W.3d 63 (Tex. Crim. App. 8005).

However, Holloway was deprived of a full and fair hearing in the state habeas court as a result of Holloway's application being forged (ECF Nos. 02, supra, 30, 50), which deprived Holloway of an opportunity to present a sufficient Brady claim, as reflected in the 2018 application ("proper application") (ECF No. 33, supra), which reflected a substantial showing of a cognizable Brady claim (ECF Nos. 33, supra, 13, supra, 50) and thus, would have entitled Holloway to an evidentiary hearing in the state habeas court. See Article 11.07 of the Texas Code of Criminal Procedure (Rev. 2012) accord *Ex parte Mowbray*, 943 S.W.2d 401, 406 (Tex. Crim. App. 1996) ("state has an 'affirmative duty' to disclose favorable evidence."). This showing once shown (ECF Nos. 33, supra, 13, supra, 50) would have entitled Holloway to an evidentiary hearing in the state habeas court, which would have provided Holloway with means by which to fully and fairly develop the record (ECF No. 33, supra, 30, supra, 3d).

Likewise, the evidence adduced in the existing record (ECF Nos. 03, 12, 13-1, 14, 16, 20, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 38, 39-1, 45) demonstrates why the state habeas proceeding on review of Holloway's 2014 application was deficient, and therefore stipulates that the state court's decision (SHCA at 7-8, 11, 102-04) was based upon "forged" and "fabricated," and "undeveloped facts" in the 2014 application (ECF Nos. 03, at Attachment A 30), which the state court's findings (SHCA at 11, 102-04) were no longer entitled to a presumption of correctness once Holloway established... Holloway's alleged state habeas application was possibly forged (ECF Nos. 02, supra, 30, 51), and would have entitled Holloway to a "cause" hearing in federal court (ECF Nos. 51, 52). See *East v. Scott*, 55 F.3d 996 (5th Cir. 1995) ("once petitioner establishes he is entitled to an evidentiary hearing, the trial court's findings are no longer entitled to a presumption of correctness"), accord *Keeney v. Tomajo Reyes*, 504 U.S. 1, 112 S. Ct. 1715 (1992) ("cause and prejudice test applies to the failure to develop material facts during a state proceeding").

Holloway was "prejudiced" because the forged 2014 application contained undeveloped facts (ECF Nos. 02, supra, 30, supra), for reasons external to Holloway (ECF Nos. 02, supra, 30, supra) which caused the application to get denied in state court (SHCA at 11, 102-04) and the USDC's conclusion that the 2014 application had been disposed of on substantial grounds (ECF Nos. 68, 69). *Id.*; *Muller v. Johnson*, 300 F.3d 374, 381 (5th Cir. 2000) ("whether a court's disposition of the case substantive, as opposed to procedural).

However, the USDC erred in their assessment of this issue (ECF Nos. 68, 69), and the Fifth Circuit's error in concluding the USDC's assessment was... reasonable (App. C.) because the Brady claim in the 2014 application (ECF Nos. 02, supra, 30, supra) had been disposed of on procedural grounds (ECF No. 51, 52), as

opposed to substantial grounds (App.C.) (ECF Nos. 68, 69), because in the State of Texas ("Texas"), Holloway was required to state [specific] facts, on the [face] of the [application] (ECF Nos. 03, 30, 51), which if proven true, would have entitled Holloway to habeas corpus relief (ECF No. 33, *supra*). See, *Ex parte Staley*, *supra*.

If the 3014 application (ECF Nos. 03, 30) did not contain sufficient facts (ECF No. 03) on the [face] of the [application], establishing that Holloway's Brady claim (ECF No. 33, *supra*) had met the requirements of Brady, which requires "(1) the evidence at issue is favorable to him because it is exculpatory or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or... inadvertently; and (3) prejudice must have ensued," the merits of Holloway's 3014 application would not have been reached, and the [application] would have been denied (SHCA at 11, 102-04). *Id.* accord *Strickland v. Greene*, 537 U.S. 333, 381-83, 119 S. Ct. 1936, 144 L.Ed. 2d 386 (1999) ("There are three components of a true Brady violation").

But because the merits of Holloway's pertinent Brady claim was not considered (ECF No. 33, *supra*), and the merits of the [forged] 3014 application was probably reached (ECF Nos. 03, 30) (SHCA at 103-04) (ECF No. 68, 69), the merits were reached in the alternative (ECF No. 51) in accordance with *Socher v. Florida*, *Id.*

Since it is clear that the merits of the 3014 application (ECF Nos. 03, 30) was reached in the alternative (ECF Nos. 03, 30, 51) by the state habeas court (SHCA at 11, 102-04), the denial of the 3014 application (SHCA at 11) is a "clear" and "express" indication of reliance on the [application] requirements (SHCA at 11) of *Ex parte Staley*, See, *Ex parte Staley*, *Socher v. Florida*, *supra*.

Thus, the Fifth Circuit's conclusion that the USDC's decision to deny Holloway's COA was reasonable (App.C.) (ECF No. 68, 69), and therefore denying Holloway's COA (App.C.) "conflicts" with *Socher v. Florida*, *supra*, considering the 3014 application (SHCA at 11) was denied (SHCA at 11) in accordance with *Ex parte Staley*, *Id.*

Reasonable or debatable jurists could disagree with USDC's resolution of the 3014 application (ECF Nos. 68, 69, 51, 30, 03) and the Fifth Circuit's decision to conclude that the USDC's decision was reasonable (App.C.), and thus, [agree] that the [forged] 3014 application (ECF Nos. 03, 30, 51) had been or should have been disposed of on procedural grounds for failing to meet the requirements of *Ex parte Staley*, *Id.*

However, the Fifth Circuit concluded that the USDC's assessment of Holloway's [forged] 3014 application (ECF Nos. 03, 30, 33, *supra*) was reasonable (App.C.) and thus, "prejudiced" Holloway because Holloway's "faith" hinged on the [forged] 3014 application (ECF Nos. 03, 30, 51) being corrected (ECF No. 33, *supra*).

2014 in the Fifth Circuit (App. A, B, C), and, because the Fifth Circuit failed to correct the forged 2014 application (ECF Nos. 22, 30, 33, 51) (App. A, B, C), and concluded the USAC's failure to correct the [forged] 2014 application (ECF Nos. 68, 69) was reasonable (App. C), deprived Holloway of an opportunity to present an unimpeded Brady claim (ECF Nos. 33, supra, 52) which may have entitled Holloway to relief (ECF Nos. 33, supra, 52). *Id.*

If the Supreme Court allow Holloway an opportunity to present Holloway's Brady claim (ECF Nos. 13, supra, 33, 52) absent the [forged] 2014 application (ECF Nos. 22, 30, 51), Holloway will prevail because Holloway had met the requirements of *Brady*. See, *Strickler v. Greene*, supra.

Holloway met the requirements of *Brady* (ECF No. 33, supra, 52), absent the [forged] 2014 application (ECF Nos. 22, supra, 30, supra) because Houston Police Department Homicide Detective Mr. Hector Garcia ("Garcia") withheld a cellphone from the murderscene (XVI. R.R. at 113-139) that was given to Garcia by Crimescene Officer Mr. C.D. Duncan ("Duncan") (XVI. R.R. at 113-139), that was "material" to Holloway's guilt and/or innocence (XVI. R.R. at 113-139). See, ECF No. 31 ("Crimescene Officer C.D. Duncan Crimescene Report, pages 2-336 -2, 237"); *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

In his crimescene report, Duncan noted, in pertinent part: "in addition to the ballistic evidence found at the crimescene, he recovered two cellphones. *Id.* The smashed and broken cellphone was marked as Evidence Item #3, and was logged into evidence at the HPD evidence room. The second cellphone found at the crimescene was... marked as Evidence Item #4 in the crimescene [photograph] and [personally] handed to Garcia." *Id.*

On April 04, 2014, Honorable Judge Ryan Patrick ("Judge Patrick") entered a discovery order ordering the Prosecution, in pertinent part to: "furnish inspection of all tangible items of physical evidence collected by the State or its agencies concerning the alleged offense, and all exculpatory evidence found at the... crimescene, to the defense." See, ECF No. 30 at Exhibit "H-1" ("Discovery Order"); *Brady v. Maryland*, supra.

Rather than complying with Judge Patrick's discovery order, and the requirements of *Brady*, Garcia withheld a cellphone from the murderscene that was given to Garcia by Duncan (XVI. R.R. at 113-139), despite Judge Patrick's discovery order (ECF No. 30, Exhibit H-1) and several requests for disclosure made by Holloway (XVI. R.R. at 40-50) (XVI. R.R. at 40-60, 113-139). See, ECF No. 31, supra; see also ECF No. 31 ("Motion For Houston Police Department To Release Seized Property"); *Brady v. Maryland*.

In doing so, the Prosecution or State violated Brady because the withheld cellphone was material to Holloway's guilt and/or innocence considering there was a strong likelihood that had the withheld cellphone (XV. R.R. at 112-139) been disclosed to Holloway for inspection of its [contents], Holloway could have determined whether the withheld cellphone (XV. R.R. at 112-139) actually belonged to "Turner" who Garcia swore to in a May 29, 2013 affidavit (XV. R.R. at 112-139), and gave testimony to during trial (XV. R.R. at 112-139), as being one of three suspects in a jail recorded phone conversation planning to murder Nguyen (XV. R.R. at 117-118), and spoke to Nguyen over the phone, possibly about delivering drugs to Nguyen prior to Nguyen being murdered (XV. R.R. at 117-119). *Id.*

Because the withheld cellphone was favorable to Holloway (XV. R.R. at 112-139), the State's failure to disclose the withheld cellphone to Holloway upon request (XV. R.R. at 112-139) (X. R.R. at 40-50) (XV. R.R. at 40-60) violated due process. *Id.*

However, the State's obligation to disclose Brady evidence to Holloway (XV. R.R. at 112-139) is constitutionally based, and is not therefore triggered only upon Holloway's requests (X. R.R. at 40-50) (XV. R.R. at 40-60, 112-139). *Id.* see also *United States v. Agurs*, 437 U.S. 99, 107-111 (1978).

Although the Prosecution alleged a photograph ("photo") was taken of the... withheld cellphone (X. R.R. at 46-47), taking a picture of Holloway's co-defendant Lynell Jordan ("Jordan") cellphone (X. R.R. at 46-47) and claiming it as a photo of the cellphone Garcia withheld from the murderscene (X. R.R. at 46-47) (XV. R.R. at 49-54), only establishes the State's good or bad faith, and does not satisfy the State's due process [obligation] to disclose the actual cellphone to Holloway (XV. R.R. at 112-139). *Id.*

Besides, who's to say if a photo of Jordan sitting on an office table (X. R.R. at 46-49) designed with a pink seal (X. R.R. at 46-49) was [actually] a photo of the cellphone Garcia withheld from the murderscene (XV. R.R. at 112-139) *Id.* It may as well have been the Prosecution's bad faith attempt to deceive the Court (XV. R.R. at 112-139) and thwart Holloway from proving Holloway's... innocence (XV. R.R. at 112-139) (X. R.R. at 46-47). *Id.*

Notwithstanding Duncan's testimony alleging the photo of Jordan's cellphone sitting in a pink seal on an office table (X. R.R. at 46-47) (XV. R.R. at 49-54) being the cellphone Duncan provided to Garcia (X. R.R. at 46-47), Garcia who... actually withheld a phone from the murderscene (XV. R.R. at 112-139) gave testimony to the [contrary] (XV. R.R. at 112-139) which revealed that the

3. Because the [existence] of the cellphone being revealed [without] the [contents] violates due process. See *Lawrence v. Texas*, 40 F.3d 225, 257 (5th Cir. 1994) ("There is no due process violation when the 'existence' [and] the 'contents' of the exculpatory evidence was disclosed at trial").

cellphone in the photo (X.R.R. at 46-47) was not] a photo of the cellphone he ("Garcia") withheld from the murderscene (X.R.R. at 112-139).³ Id.

Moreover, Garcia provided testimony revealing he ("Garcia") still possessed the withheld cellphone but misplaced it (X.R.R. at 112-139) thus preventing it's... production at trial (X.R.R. at 112-139), and "acknowledge it was a possibility that Turner could have [dropped] the cellphone he ("Garcia") misplaced fleeing away from Nguyen's home after a drug deal I went [ad] (X.R.R. at 118-119) and Turner [fulfilled] his ("Turner's") plan to murder Nguyen (X.R.R. at 117-118).³ Id.

Because the Prosecution [fabricated] a story about "a photo of a [pink] cellphone with a picture of Jordan's face on the screen as being a photo of the cellphone Duncan gave Garcia at the murderscene (X.R.R. at 46-47) (X.R.R. at 49-54) and because Garcia, who actually suppressed the misplaced cellphone he ("Garcia") withheld from the murderscene provided testimony to the contrary, that the... cellphone in the photo was [not] the same cellphone he ("Garcia") withheld from the murderscene but misplaced (X.R.R. at 112-139) the Prosecution was required to provide Holloway the cellphone Garcia [misplaced] or its equivalent. (X.R.R. at 112-139) Id. see also *Kyles v. Whitley*, 514 U.S. at 438-440 (1995) ["Knowledge of law enforcement agencies is imputed to the prosecution, even if the prosecution himself did not know of the evidence."]. But since the Prosecution failed to provide Holloway the cellphone Garcia [misplaced] or its equivalent (X.R.R. at 112-139), a due process violation occurred. Id.

According to Garcia's affidavit (X.R.R. at 112-139) "Turner" provided his ("Turner's") cellphone number to HPA at some point throughout the course of Nguyen's... homicide investigation which comprehends that HPA made contact with "Turner" (X.R.R. at 112-139). See, ECF No. 52 ("Memorandum Attachment-A, '79pE mail'"); *Rector v. Johnson*, 130 F.3d 552, 560 (5th Cir. 1997).

Because it is [inferable] Garcia made contact with "Turner" at some point during the course of Nguyen's homicide investigation (X.R.R. at 112-139) it is possible that Garcia interrogated "Turner" and therefore questioned Turner about his ("Turner's") interactions with Nguyen (X.R.R. at 117-119). Id. While questioning Turner about Turner's interactions with Nguyen (X.R.R. at 117-119) it's possible

4. Due Process demands simply that where evidence is collected by the State, law enforcement agencies must establish and follow rigorous and systematic procedures to preserve the evidence or its equivalent for use of the defendant. See, *California v. Trombetta*, 467 U.S. 483-484 (1984).

5. In cases in which the [police] themselves, by their conduct indicate that the evidence form a basis for exonerating the defendant, a bad faith showing by the defendant is [not] necessary. See, *Arizona v. Youngblood*, 488 U.S. 58 (1988).

Garcia obtained Turner's cellphone number to verify if the withheld cellphone Garcia [misplaced] actually belongs to Turner (XVt. R.R. at 112-139). *Id.*

It is possible that "Turner" may have had an alibi, and Garcia seized "Turner's" cellphone Garcia misplaced until the conclusion of Nguyen's homicide investigation (XVt. R.R. at 112-139). See ECF No. 52, *supra* ("Memorandum Attachment-B, Bottom Email"); Rector v. Johnson, *supra*.

Finally, it is possible that at some point during the course of Nguyen's homicide investigation Garcia [misplaced] Turner's cellphone which prevented its production at trial (XVt. R.R. at 112-139) (ENJ, *supra*) *Id.*

Since it was possible HAD had possession of Turner's cellphone (XVt. R.R. at 112-139), Holloway made several requests for disclosure of "Turner's" cellphone and any other cellphone relating to the instant case (X. R.R. at 40-50) (XVt. R.R. at 49-54, 112-139). See ECF No. 31, *supra*; see also ECF No. 52 *supra* at "Memorandum Attachments A and B, *supra*;" Brady v. Maryland, *supra*.

Despite Holloway's requests (X. R.R. at 40-50) (XVt. R.R. at 49-54, 112-139) the State [continued] to fail to disclose the withheld cellphone Garcia [misplaced] to Holloway (XVt. R.R. at 112-139), thus depriving Holloway a fair trial (XVt. R.R. at 112-139). *Id.*; Kyles v. Whitley, *supra*.

Moreover, due process was violated because the State possessed Holloway's cellphone (XVt. R.R. at 84, 93), the alleged accomplice Khamdria's cellphone (XVt. R.R. at 84, 93), Bullock's cellphone (XVt. R.R. at 84, 93), Jordan's cellphone (XVt. R.R. at 112-139), and, Nguyen's cellphone (XVt. R.R. at 13), but had [no] record of "Turner's" cellphone (XVt. R.R. at 112-139), which comprehends that the "only" cellphone missing from this case, was possibly Turner's cellphone found at the murderscene (XVt. R.R. at 117-120). *Id.* Thus, the State's failure to disclose the withheld... cellphone Garcia [misplaced] to Holloway [deprived] Holloway of an... [opportunity] to prove "Turner" murdered Nguyen (XVt. R.R. at 117-120). *Id.*

Especially since "Garcia gave testimony that "Turner" planned to murder Nguyen (XVt. R.R. at 117-118); spoke to Nguyen possibly about delivering drugs to Nguyen prior to Nguyen being murdered (XVt. R.R. at 118-119); and, because Garcia acknowledged it was a possibility "Turner" could have dropped the withheld cellphone Garcia [misplaced], which prevented its production at trial, fleeing away from Nguyen's home after a drug deal went bad (XVt. R.R. at 118-119) and "Turner" murdered Nguyen to fulfill his ("Turner's") plan (XVt. R.R. at 117-118). *Id.*

Since there was a possibility the withheld cellphone may have belonged to "Turner" (XVt. R.R. at 117-119), Holloway couldn't prove the cellphone Garcia [misplaced]

[actually] belonged to Turner and therefore murdered Nguyen (XIV R.R. at 117-119) unless Garcia would have disclosed the actual contents of the misplaced withheld cellphone (XIV R.R. at 117-119) or provided Holloway with exculpatory facts about the cellphone (XIV R.R. at 117-120) or if a witness could have placed "Turner" within the vicinity of Nguyen's home around the time Nguyen was murdered (XIV R.R. at 117-120) (XIV R.R. at 4) or if Holloway knew for a fact that "Turner" actually delivered drugs to Nguyen prior to Nguyen being murdered (XIV R.R. at 117-120), then Holloway would have known or could or should have known of the exculpatory facts (XIV R.R. at 112-139) and thus, could have proven "Turner" actually murdered Nguyen (XIV R.R. at 117-139). Id.

Accordingly, the State escaped its inescapable obligation to disclose the withheld cellphone Garcia [misplaced] or the misplaced cellphone's equivalent when the point of a reasonable probability was reached (XIV R.R. at 112-139). Id.

Holloway satisfied the "first" component of a Brady violation because... Holloway has established that the withheld cellphone was [material] to Holloway's guilt and/or innocence (XIV R.R. at 112-139) because Garcia gave testimony that "Turner" [planned] to murder Nguyen (XIV R.R. at 117-118); spoke to Nguyen about possibly delivering drugs to Nguyen prior to Nguyen being murdered (XIV R.R. at 118-119); and, because Garcia [acknowledged] it was a possibility "Turner" could have dropped the withheld cellphone Garcia [misplaced] fleeing away from Nguyen's home after murdering Nguyen (XIV R.R. at 117-120). See Strickler v. Greene, 527 U.S. 263, 380 (1999).

Holloway satisfied the "second" component of a Brady violation because Holloway has established (ECF No. 33, supra) that the withheld cellphone Garcia [misplaced] was willingly [suppressed] because Garcia gave testimony re (Garcia) [never] disclosed the cellphone to the defense (XIV R.R. at 112-139), despite Holloway's requests (XIV R.R. at 40-50) (XIV R.R. at 112-139), despite Judge Patrick's discovery order ("supra"), and despite the State's obligation (XIV R.R. at 112-139). Id.

Holloway satisfied the "third" component of a Brady violation... because Holloway has established that [prejudice] ensued because Holloway has been charged, indicted, and convicted for the murder of Nguyen (XIV R.R. at 29) (XIV R.R. at 5), but despite Holloway maintaining his innocence (XIV R.R. at 3) (XIV R.R. at 178-179), Garcia [continued] to suppress the withheld cellphone he [misplaced] (XIV R.R. at 117-139), which unequivocally had a substantial and injurious impact on Holloway's ability to [prove] Holloway's innocence (XIV R.R. at 112-139). Id.

Because the withheld cellphone Garcia [misplaced] (XIV R.R. at 112-139) in conjunction with every single witness who gave testimony during trial [excluded] Holloway for the murder of Nguyen (XIV R.R. at 13) (XIV R.R. at 19) (XIV R.R. at 19).

at 130) (XVI. R.R. at 40-90) (XVI. R.R. at 89-90) (XVI. R.R. at 112-139) (XVI. R.R. at 178-179) (XVI. R.R. at 180) (XVI. R.R. at 112-139) (XVI. R.R. at 133-155) (XVI. R.R. at 53-75) (XVI. R.R. at 120, 127) shows "Turner" most likely murdered Nguyen (XVI. R.R. at 117-119), a "critical" element of Holloway's ex parte defense was based upon disclosure of the withheld cellphone Garcia misplaced (XVI. R.R. at 117-139). Id.

Absent the withheld cellphone Garcia misplaced (XVI. R.R. at 112-139), Holloway was [harmed] because not only did the withheld cellphone Garcia misplaced (XVI. R.R. at 112-139) outweigh other evidence (XVI. R.R. at 13) (XVI. R.R. at 19) (XVI. R.R. at 130) (XVI. R.R. at 40-90) (XVI. R.R. at 89-90) (XVI. R.R. at 178-179) (XVI. R.R. at 180) (XVI. R.R. at 112-139) (XVI. R.R. at 133-155) (XVI. R.R. at 53-75) (XVI. R.R. at 120, 127), but because in the withheld cellphone's absence Holloway was denied a fair trial (XVI. R.R. at 112-139). Id.

Had the withheld cellphone Garcia misplaced (XVI. R.R. at 112-139) been ... disclosed to Holloway and the defense inspected its [contents] and determined the withheld cellphone Garcia misplaced actually belonged to Turner (XVI. R.R. at 117-139), that [revelation] would have placed "Turner" at the murderscene, delivering drugs to Nguyen prior to Nguyen being murdered (XVI. R.R. at 118-119), and thus murdered Nguyen to fulfill the alleged ordered hit (XVI. R.R. at 117-119) to murder Nguyen (XVI. R.R. at 117-118), and, Holloway would have ... therefore been found [not] guilty of murdering Nguyen (XVI. R.R. at 112-139). See Wood v. Bartholomew, 516 U.S. 15, 116 S.Ct. 7 (1995).

Because Holloway has established that the Fifth Circuit [failed] to take into consideration that Holloway 2014 application had been disposed of on procedural grounds (ECF Nos. 03, 20, 51) as opposed to substantial grounds (ECF Nos. 68, 69) in the USDC (ECF Nos. 68, 69), in accordance with Ex parte Staley and the merits of the 2014 application was reached in the alternative (SHCA at 14, 102-04) and therefore "conflicts" with Socher v. Florida (App. C.), in their denial of Holloway's COA (App. C.) (ECF Nos. 68, 69), a writ of certiorari should issue because reasonable jurists could agree that Holloway's Brady claim (ECF No. 23, supra) was and is adequate to deserve encouragement to proceed ... further or could disagree with the USDC's resolution of the impeded Brady claim (ECF Nos. 03, 20, 12, 51, 52, 68, 69). Miller-El v. Lockhart, 537 U.S. 333, 337 (2000).

II.

The Fifth Circuit must recall its mandate (App. B.) and stay the

Mandate to allow Holloway to file a motion for rehearing en banc if Holloway... can establish "cause" for Holloway's failure to timely file a petition for rehearing en banc (App. B.).

The Fifth Circuit erred in failing to recall its mandate (App. B.) and stay the mandate pending Holloway filing a petition for rehearing en banc (App. B.), which conflicts with the Supreme Court decision in *Bell v. Thompson*, 545 U.S. 806 (2005), because on May 28, 2021, the Fifth Circuit denied Holloway's COA (App. C.) *Bell v. Thompson*, supra.

On June 15, 2021, Law Library Supervisor, Sergeant Mrs. Blackmon ("Sgt. Blackmon") approached Holloway's assigned cell (13-C-442) and provided Holloway Holloway's copy of the Fifth Circuit's denial of Holloway's COA (App. C.), which had a neopost stamp, dated 06/04/21. Id.

Because Holloway's COA was denied on May 28, 2021, and Holloway received a copy of the denial of Holloway's COA on June 15, 2021 (App. C.), Holloway requested an extension of time to file a petition for rehearing (App. B.) which was granted (App. B.), and a motion to stay the mandate and/or recall the mandate pending the filing of a petition for rehearing before the mandate issued (App. C.) which was denied June 29, 2021 (App. B.), despite being timely filed [before] the mandate issued on June 22, 2021 (App. C.), Id.

Although the court found "cause" existed to allow Holloway an extension of time to file a petition for rehearing en banc (App. B.), the Fifth Circuit failed to find "cause" to recall and stay the mandate pending the filing of a petition for rehearing en banc (App. B.). Id.

However, according to Rule 41(b) FRAP: "The court's mandate issues 7 calendar days [after] the time to file a petition for rehearing under Rule 40(c)(1) FRAP expires, which would have been issued on June 18, 2021 (App. C.) which thus Holloway timely filed an extension (App. B.) and petition for rehearing (App. B.), thus the Fifth Circuit was required to recall

6. Rule 40(c) of the Federal Rules of Appellate Procedure (FRAP) provides: "Unless the time is shortened or extended by order or local rule, a petition for panel rehearing must be filed within 14 days after entry of judgment. See, Rule 40(c)(1) FRAP.

its mandate (App. B.) considering Holloway timely requested a stay of the mandate pending the filing of a petition for rehearing (App. B.). Id. Moreover, Holloway provided the Fifth Circuit with sufficient grounds for rehearing, which reflects:

(1) The panel decision of the Fifth Circuit not to take into consideration that Holloway's [forged] state habeas application was what the district court and state habeas court based its decisions on, and was the reason Holloway did not meet the requirements of *Brady v. Maryland*, and led to the Fifth Circuit's denial of Holloway's COA, conflicts with the Supreme Court decision in *Sacher v. Florida*, 504 U.S. 537, 113 S. Ct. 2114 (1992), because the denial of Holloway's *Brady* claim was based upon "forged" facts and denied on procedural grounds in accordance with *Texas* law, therefore the USDC and Fifth Circuit cannot base their judgments on a forged state habeas application; and

(2) The panel decision of the Fifth Circuit to deny Holloway's COA because Holloway failed to meet the requirements of 28 U.S.C. §§ 2253(c) and 2254, and *Brady v. Maryland*, conflicts with Supreme Court precedents governing those requirements. Because the conflict is over an important question as to whether the State of Texas violated due process by failing to disclose material exculpatory evidence to Holloway's compelling reasons exists for a hearing or rehearing en banc. Id.

Recalling the mandate and staying the mandate pending the filing of a petition for rehearing in the Fifth Circuit (App. B.) for raising the above grounds for rehearing, and because Holloway timely filed a petition for rehearing and stay of mandate (App. B.), was [appropriate] for correcting the above two (2) issues, and in compliance with Rules 35 and 40 FRAP, [before] review of the above 2 issues is requested in the Supreme Court, to ensure that litigation following the denial of certiorari will be infrequent. See *Bell v. Thompson*, supra.

Because the Fifth Circuit failed to recall and stay the mandate (App. B.) for the above reasons, Holloway was [prejudiced] because Holloway was deprived of an opportunity to have the Fifth Circuit address the above 2 grounds [before] the Supreme Court (App. B.), thus in violation of Rules 35 and 40 FRAP. Id. However, the Fifth Circuit [did] consider an out of time petition for rehearing (App. B. at 1-2). Id.

If the Supreme Court consider this petition Holloway will prevail for all of the reasons stated above. Id.

III.

The Supreme Court must overrule Judge Andrew Oldham's ("Oldham") decision to deny Holloway's COA alone (App.C.) because according to Rule 27(4)(C) FRAP "a single circuit judge may act alone, on any motion, but may not determine an appeal or proceeding." See, *Hohn v. United States*, 534 U.S. 245 (1988) ("decisions made with regard to a COA should be made by the [entire court] itself, and not by the individual judge").

This Court is encouraged to overrule Oldham's decision to deny Holloway's COA, as it was determined alone (App.C.) because Oldham clearly abused his discretion in violation of Rule 27(4)(C) FRAP. *Id.*

Holloway raise this issue in Holloway's petition for rehearing (App.B.), but the Fifth Circuit panel refused to address Oldham's abuse, as a whole (App.A.). *Id.* Thus, because Oldham's decision (App.C.) was not a decision by the entire court, the Supreme Court has authority on *denovo* review of this issue to remand this issue for consideration by the entire panel (App.C, A.). See, *Id.*

If this Court finds that Oldham abused his discretion (App.C.) and Holloway's COA is considered by the entire court, Holloway will prevail because Holloway had established that "reasonable jurists could debate whether the denial of the [forged] Brady claim (SHCA at 11, 102-04) had been disposed of on procedural grounds (ECF Nos. 02, 30, 33, *supra*, 51, 52), as opposed to substantive grounds (ECF Nos. 68, 69), or whether "Holloway's" Brady claim was adequate to deserve encouragement to proceed further (ECF Nos. 12, 23, *supra*, 52), and the Fifth Circuit thus, would have issued a COA (App.C.). *Id.*; see also *Holloway v. Lumpkin*, 5th Cir. No. 20-20357 ("Certificate of Appealability, Grounds One through Four filed September 17, 2021"); *Miller et al v. Cockrell* *supra*.

If this court refuses to address Oldham's clear abuse of discretion (App.C.), Holloway will be "prejudiced" because Holloway has met Holloway's burden of establishing that: "reasonable jurists could debate whether the denial of the [forged] Brady claim (SHCA at 11, 102-04) had been disposed of on procedural . . . grounds (ECF Nos. 02, 30, 33, *supra*, 51, 52), as opposed to substantive grounds (ECF Nos. 68, 69), or whether "Holloway's" Brady claim (ECF Nos. 12, 23, *supra*, 52) was adequate to deserve encouragement to proceed further (ECF Nos. 12, 23, *supra*, 52) as alleged in Holloway's COA." *Id.*

Moreover, Holloway will be "prejudiced" because if the Supreme Court denies this issue, Holloway would be deprived of a mechanism to correct Oldham's [illegal] denial of Holloway's COA (App.C, B, A.). *Id.*

In all things, Holloway believes that granting Certiorari in this case is... important to Holloway, others who are similarly situated, and society because: (1) it would deter [prison officials] from interfering with prisoners' court filings once prisoners disclose those documents to prison officials for mailing to the courts; (2) it would deter prison officials from withholding prisoners' legal documents until time limitations expire, intending to cause prisoners' legal documents to get denied; and (3) it would deter circuit judges from... [clearly abusing] their discretion(s) and deciding prisoners' cases *ex parte* when said judges are prohibited from determining certain proceedings *ex parte*. *Houston v. Hack*, 497 U.S. 370, 71 (1998) ("prisoners cannot take the steps other litigants can take to monitor the processing of their legal documents; and to ensure the court clerk receives them").

Moreover, granting Certiorari is important because... prior to Holloway's incarceration Holloway was (1) a Certified Electrician; (2) a Certified ASE Technician; (3) Certified in NCCCO Construction Math; (4) Certified in AED/CPR, which Holloway had obtained while incarcerated in the Louisiana State Penitentiary ("Angola") in 2011-2012. *Borefoot v. Estelle*, 463 U.S. 880, 102 S.Ct. 3383 (1983) ("the court may consider the severity of the sentence").

Because Holloway is incarcerated for a crime Holloway maintains he did not commit (see A.A. 3), granting certiorari is important, because society will win, and Holloway will then be given an opportunity to contribute to society by being able to utilize those certifications in society, which would contribute to a more productive economy. Id. Moreover, utilizing those certifications in society, especially with the opportunities available for or to ex-prisoners, would make Holloway's chance of possibly committing future crimes less-likely. Id. Thus, certiorari should be granted. Id.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Arthur R. Hellaway Jr.

Date: September 15, 2021