

No. 21-7562

ORIGINAL

#20-20555

Supreme Court, U.S.
FILED

MAR 23 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Tyler — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Michael Jamil Tyler
(Your Name)

1697 Fm 980
(Address)

Huntsville Texas 77343
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. whether, the Fifth Circuit Court applying Moore, 534 F3d 465 Conflict with the decision of this Court Hancock, 139 Sct 2714
2. whether, the Fifth Circuit misapplied 28 U.S.C § 2244(b) while denying a first-time Petitioner
3. whether the Fifth Circuit Court erred when denying actual Innocence Gateway Claim without performing the Required Probabilistic Determination Schlup, 513 U.S 298

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A	Decision of the fifth circuit denying review
APPENDIX B	Decision of the fifth circuit denying reconsideration
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Hancock v. Davis 139 S.Ct 2714	u
Schlup v. Delo 513 U.S 518	5,
House v. Bell 547 U.S 518	9
McGowan v Perkins 133 S.Ct	7
Osborne v. Ruckett 411 F3d 911	7
Gomez v. Jamet 350 F3d 673	u
Moore v. Quarterman 536 F3d 456	u,
Kuhlmann v. Wilson 477 U.S 436	7
Sanders 477 U.S 451	8

STATUTES AND RULES

28 U.S.C § 2254(2)	5
28 U.S.C. § 2244(b)	7

OTHER

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☒ is unpublished.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 _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 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: December 28, 2021, and a copy of the order denying rehearing appears at Appendix B.

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ineffective assistance of Counsel

Actual Innocence

28 USC § 2244(b)

28 U.S.C § 2244(B)

STATEMENT OF THE CASE

On 12-22-2017 the Petitioner was granted
COA by United State Circuit Judge Leslie M.
Southwick #17-20249

On 4-23-2019 the Fifth Circuit denied the
Petition as time-barred

On 12-1-2021 the Petitioner filed a motion
for Reconsideration # 20-20555 on 12-28-2022
the motion for reconsideration was denied

REASONS FOR GRANTING THE PETITION

The Fifth Circuit Court of Appeals has decided an important Federal question in a way that conflict with relevant decision of this Court, concerning the actual Innocence Gateway to habeas reviews applied in Schlup v. Delo 513 U.S. 298. which allow first-time Petitioner who allege Constitutional Violation has lead to the Conviction, could produce newly Presented evidence of his Innocence, Thus, requiring the habeas Court must make Probabilistic Determination.

Several of the Court observations of the the Gateway has been over-looked or misapplied calls for the Supreme Court to exercise its Power to consider the actual Innocent Gate-way Standard and decide the entire matter in controversy amongst the Circuit 28 U.S.C 1254 (2)

Following Schlup, there were confusion amongst the Circuit Courts. The disagreement centers on whether the new reliable evidence for the propose of Schlups Gateway must be newly discovered or instead evidence that was available but not Present

at trial. Osborne v. Parkett 411 F3d 911 (8th Cir) requiring newly discovered evidence, while Gomez v. Jaimez 350 F3d 1673 (7th Cir) requiring newly presented evidence

As a result of the conflict the Supreme Court most recent Precedent settled the confusion. Since habeas corpus is at its core an equitable remedy the proper application of the "newly presented" standard rather than more rigorous "newly discovered" evidence requirement, would govern the Schlup actual Innocent. Hancock v. Davis 139 S.Ct. 2714

According to the instruction in Hancock, the Circuit Court applied the wrong standard while evaluating the 2021 Petition, which denied Petitioner three Alibi witnesses testimony, Report from expert eye-witness and clear error in state finding of fact #20. For, the circuit conceded in error, evidence, does not qualify as "new" under Schlup, if it was always within reach of Petitioner Personal Knowledge. more, 534 F3d at 465.

The Court took occasion to address the Principle Purpose in Hancock, to over-ride bad law and articulate the proper legal framework

and standard for Schlup Juris Prudence.

The Fifth Circuit clear disregard for the Supreme Court guidance, that Moore was wrong standard, is compelling reason to grant the instant request for Certiorari

first-time

THE Fifth Circuit Court of appeals establishing of Moore, 534 F3d 465 as the authority for Gate way Claims has an erroneous view of Federal Law. For Moore was not a first-time Petitioner, instead, he was an abusive filer of meritless writs.

The Principle of the Gate way inquiry was exclusively for first-time Petitioner, Claimant Innocence to avoid the time-bar. Thus, Presenting his Constitutional Claims, as if it was file at Proper Time. McCougin v Perkins 133 S.Ct 1924

Section 28 U.S.C. § 2244(b) established finality rules, which restricted the district court obligation to entertain Petition by State Prisoner to cases, where the Petition is neither successive nor abusive. Kuhlmann v. Wilson 477 U.S 436.

However, in light of the 2244(B) new rule
The Court continued to rely on the reference in
Sanders 477 U.S. 451 to the ends of justice. The
Court addressed the importance of judicial dis-
cretion for habeas court and rules to govern the
finality of habeas adjudication. However, it has
not been settled with clear guidance, who the
statute was giving permission to file?

Therefore, the over-riding importance
of the greater individual interest merits protection
from misconceived application of federal statute

Petitioner contends 28 U.S.C. § 22
44(B) was created to separate the first-time
petitioner, with permissive language from the
identified category of petitioner that should not
be entertained

Tyler has never had the merits
of his constitutional claim heard by any court
while more abusive petition was addressed
call for the granting of the certiorari to explicitly
address the fundamental difference in 2244(B)
allow Tyler, a first-time petitioner to have his
claims heard

Probabilistic Determination

Schlup v. Delo 513 U.S. 512 and further explained in Hause v. Bell 547 U.S. 518. The Supreme Court held, while decide a Schlup-TYPE Actual Innocence gateway claim The district court must make a Probabilistic Determination about what reasonably properly instructed juror would do as to whether a petitioner has made the requisite showing of Innocence, while assessing the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial

The Circuit Court has acknowledge its duty to perform the requirement of the Probabilistic Determination in gateway claims by developing, the practice of deciding claim in arguendo Wright v. Quarterman 70 Fed 581, Moore v. Quarterman 534 Fed 454, Komolafe v. Quarterman 246 F. Appx 270, in re Warren 537 Fed Appx 457, Hancock v. Davis 906 Fed 387, Fratte v. Davis 889 Fed 225

Petitioner contends, the Circuit Court applying arguendo in some cases, while denying his

Petition without determining the legality of his conviction, by applying the proper standard has departed from accepted course of the Court. Schlup v. Delo 513 U.S. 518

Petitioner new evidence, would present the extraordinary case the Schlup Court envisioned. Therefore, it would be miscarriage of justice to require a citizen to remain in prison, without honoring his request to view the evidence he claims will prove his innocence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael J. Lyle

Date: 3-23-2022