IN THE
UNITED STATES SUPREME COURT

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TONY GENE WILLIAMS, Sr., §
(Petitioner)

vs. § Cause No. 21-7618

BOBBY LUMPKIN,
Director OF TDCJ-ID,
(Respondent) §

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**PETITION FOR REHEARING**
**OF "WRIT OF CERTIORARI"**

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Challenge To The State Court's Ruling
On "Petition For Discretionary Review",
Cause No. PD-0013-21, Austin, Texas

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TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, TONY GENE WILLIAMS, Sr., Petitioner, Pro Se, in the above styled and numbered cause, files this his "Petition For Rehearing On 'Writ Of Certiorari'"; in good faith, and not for delay or otherwise vex, harass or disrupt established Court proceedings. Petitioner contends Due Process and the interest of justice would be best served by this Court GRANTING the same, and in support thereof, your Petitioner would show the following:

I.

PLEA FOR LIBERAL SCRUTINY

That your Petitioner seeks the "Protection" of this Court, accorded Pro Se litigants, and respectfully request of this Court to construe said "Petition For Rehearing" liberally, as required in Erickson v. Pardus, 127 S.Ct. 2197, (2007); Haines v. Kerner, 92 S.Ct. 594, (1972). Petitioner is a layman at the law and asserts, upon liberal scrutiny, this Court would find his Constitutional claims have merit.

II.

JURISDICTION

That this Honorable Court has Jurisdiction to entertain said "Petition For Rehearing" request, pursuant to the provisions of **RULE 10; 44**, Rules Of The Supreme Court, U.S.C.A., Amend. 5; 14.

III.

GROUNDS FOR REHEARING

Petitioner asserts intervening circumstances of a substantial or controlling effect warrants this Court finding Petitioner's claims are 'Certworthy' and requires 'Rehearing' consideration, in light of a split of Authority between the circuits that this Court has typically sought to resolve, Reyes Mata v. Lynch, 135 S.Ct. 2150, 2156 (2015). In addition, "compelling reasons" exist, which includes the

existence of conflicting decisions on issues of law among State Courts of last resort, Brown v. United States, 139 S.Ct. 14, (2018); and the State Court's ruling has so departed from the accepted and usual course of judicial proceedings, and is so in conflict with this Court's precedence, as to call for this Court's Supervisory Power. Nguyen v. United States, 123 S.Ct. 2130, 2134, (2003). See also **RULE 10**, Rules Of The Supreme Court.

Petitioner challenged the Constitutionality of his confinement on the following grounds:

1. The Evidence was wholly insufficient to establish every element of the offense charged;

2. The Court erred when it failed to abate the Appeal, upon request of both defense and the state, after discovery of 'newly available evidence' of DNA, linking someone else with the offense;

3. The Trial Court erred in its admission of 'Non-corroborated' testimony of jailhouse snitch;

4. The Trial Court violated the 'Confrontation Clause' of the 6th amendment by permitting the use of 'Hearsay' testimony.

## IV.

## GROUNDS FOR REHEARING OF ERROR #1 (Restated)

THE STATE COURT'S RULING OF LAST RESORT, IN ITS DETERMINATION ON PETITIONER'S GROUND OF "INSUFFICIENT EVIDENCE" TO CONVICT, WAS DONE IN SUCH A WAY AS TO CONFLICT WITH PRECEDENT FROM THE UNITED STATES SUPREME COURT

## ARGUMENTS, AUTHORITIES and DISCUSSIONS

That Petitioner contends the State Court's ruling, denying Petitioner relief on his claim of 'Insufficient Evidence' was determined in such a way as to conflict with the Supreme Court controlling precedent of Jackson v. Virginia, 99 S.Ct. 2781, (1979) and its progeny, warranting this Court's Supervisory Power and intervention to alter a fundamental miscarriage of justice from prevailing against one who is actually innocent. See Murray v. Carrier, 106 S.Ct. 2639, 2648-49, (1986)(...as we noted in Engle v. Isaac, 102 S.Ct. 1558, (1982) "[i]n appropriate cases", the principles of comity and finality that inform the concepts of cause and prejudice "must yield to the imperative of correcting a fundamentally unjust incarceration." 102 S.Ct. at 1576. We remain confident that, for the most part, "victims of a fundamental miscarriage of justice will meet the cause-and-prejudice standard."...Accordingly, we think that in an extraordinary case where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default). See also Smith v. Murray, 106 S.Ct. 2661, 2668, (1986). To alter a fundamental miscarriage of justice, this Court should accord Petitioner a 'Rehearing' on the merits. The record evidence establishes the following:

The State, from its own admission, concedes there is no direct evidence tending to link Petitioner to the charged

offense of Murder, resulting into a dismissal of the Murder offense, but seeking to establish the lesser included offense of Aggravated Robbery, even though, the State, in order to prove the offense of Aggravated Robbery, must establish 'theft' plus 'assault'. There is no evidence that Petitioner 'assaulted' or caused 'serious bodily injury' or 'death', to constitute the charge of Aggravated Robbery:

> realize that when you get past some of this other stuff, when you get past that **We Really Can't Prove The Murder.** Frankly, **Admittedly, Concedely,** but when you get past that, you realize we have abundantly proved a robbery.

(R. IV - 111). The State could not prove Robbery or Murder. There is 'No Evidence' establishing the required elements of the offense of Aggravated Robbery.

## FACTS OF THE CASE

Said offense Petitioner was charged and convicted on was alleged to have occurred against the Complainant, DONALD LEE CLARK, on or about January 11, 2014, in Kilgore 'Rusk County' Texas. (R. III - 8). The victim was apparently robbed and murdered, inside of his own home, located at 2012 Farm to Market Road, Kilgore, Texas. (R. III - 44). On 1/11/14, between the hours of 8am and 9am, State witness and nephew of the deceased, SCOTT ALAN CLARK, arrived at the victim's home to conduct home repair. Upon opening the front door, SCOTT found his uncle, lying face down, deceased

after suffering a single gunshot wound to his left eye. The bullet penetrated through his glasses. (R. III - 45, 46). The victim was in an apparent struggle with his assailant, as the home was found in disarray, and blood spatter were on the walls, floor and carpet. SCOTT called 911. (R. III - 46). The State was required to establish 'theft of property', a key element of the offense of Aggravated Robbery, and the **Sole Tangible Evidence**, the State relied on to prove the offense of Aggravated Robbery was the victim's wallet. (R. III - 15)(R. IV - 77, 89, 90, 98).

There was **No Evidence** linking your Petitioner to the victim's wallet. The victim's wallet was found down the road near the victim's home, with all of its contents emptied out on the road. (R. III - 15; 47). The wallet was forensically tested. (R. IV - 40). DNA was found on the wallet, and the DNA profile from the wallet was interpreted as a mixture of three (3) individuals, the victim, himself, and to (2) unknown individuals. Your Petitioner was **Excluded** as the profile contributor. (R. III - 53, 54). There is no other property of victim that links to Petitioner. The State also relied upon a jailhouse snitch, who present 'uncorroborated' testimony that Petitioner allegedly informed him that he robbed the victim and stole his property, consisting of a 'generator' that he eventually purchased from Petitioner. (R. III - 139). The State sought to use witness SABIAN ALEXANDER to prove theft of property, and that the 'generator' purchased by ALEXANDER derived from

the victim's home. After a thorough investigation into the Generator ALEXANDER purchased and pawned, it was discovered the Generator did not derive from the victim's home at all: (R. III - 143):

> Q. So you think you could get in trouble for some of the things that you've done or heard?
> A. No, I think I can get in trouble for me taking a Generator that Came From That House and taking it to the Pawnshop and selling it.
> Q. Are you aware that that was **investigated**, and that Generator **DID NOT** come from that house?
> A. Well, it came from 2012.
> Q. You went to the Pawshop and pawned a Generator that you thought came from Mr. Clark's house?
> A. Yes, sir.
> Q. But it didn't, did it?

Your Petitioner asserts there is **No Evidence** to establish the key element of 'theft of property', and the State, from hits own admission, concedes and admits there is **No Evidence** to prove Murder, or that Petitioner caused 'serious bodily injury or death' to the victim, to constitute the offense charged. To establish Aggravated Robbery, proscribed by the provisions of Art. 29.03, V.T.C.A., the State is required to prove:

1. A person;
2. While in the course of committing **THEFT**, as defined in chapter 31;
3. And with intent to obtain or maintain control of the **PROPERTY**;
4. (a) Cause Bodily Injury To Another;
   (b) Uses or exhibits a deadly weapon; or
   (c) Causes Bodily Injury to another person or threatens or places another person in fear or imminent bodily injury or death, if the other person is:
5. 65 years of age or older; or

6. a disabled person

Petitioner contends the State wholly failed to meet its burden, as required by this Court precedent of Jackson v. Virginia, 99 S.Ct. 2781 at 2788, which states, in its adoption of In Re Winship, 90 S.Ct. 1068, (1970):

> "The Winship doctrine requires more than simply a trial ritual. A Doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will rationally apply that standard to the facts in evidence. A 'reasonable doubt', at a minimum, is one based upon 'reason.' Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a Jury. In a federal trial, such an occurrence has traditionally been deemed to require **REVERSAL** of the conviction... ...Under Winship, which established proof beyond a reasonable doubt as an essential of Fourteenth Amendment due process, it follows that when such a conviction occurs in a state trial, It Cannot Constitutionally stand.

Hence, Federal due process protection, assured Petitioner by way of the 14th Amendment guarantee, requires the State to establish its case by proving 'every element' necessary to constitute the offense charged. The State wholly failed in the discharge of its duty. Petitioner advanced his 'sufficiency of the evidence' claim in its Petition for Discretionary Review. **Judge McCLURE**, of the Texas Court of Criminal Appeals, stated he would **GRANT** the P.D.R. The State wholly failed to prove 'theft of property' and/or 'assault', as required, including the use of a 'deadly weapon'. In addition, the 1st element of the offense, i.e., "a person" ... requires the State prove your Petitioner, and he, alone, was 'the person' who committed the charged

offense, and the evidence is wholly insufficient to prove said essential elements of the offense. Hence, it follows, when such deficiency is shown at a State Trial, like unto a Federal Trial, the case must be REVERSED.

The State sought to prove its case by linking Petitioner to the home of the victim, a full 15 hours prior to the discovery of the victim by his nephew. (R. III - 46). Petitioner was friends with the victim, and often visited the victim's home. On the date of the offense, your Petitioner, with his friend, CHARLENE JACKSON, visited the victim's home, in hope of purchasing a truck that was for sale. (R. III - 107-109). While at the victim's home, at approximately 3pm, your Petitioner discussed the truck purchase, but the sale did not occur. In the interval, the victim offered Petitioner, and Ms. JACKSON a cigarette, which was smoked on the front porch area of the victim's home. Petitioner asserts he and Ms. JACKSON were clearly present at the victim's home. The victim's nephew spotted Petitioner's vehicle the day prior to the offense, arriving at his uncle's home, and the cigarette butts, found approximately 25 yards away on the victim's front yard area of the home, matched Petitioner and Ms. JACKSON's DNA. (R. IV - 52). When the sale of the truck did not occur, and it was clear the victim was not going to sale the truck to Petitioner, the two left the victim's home, and left him, alive and well, (R. III - 113). Petitioner eventually dropped Ms. JACKSON off at the spot he picked her up at.

The victim's body was found, the next day, at approximately 9:00 am, approximately 15 hours after Petitioner had left the victim's home. (R. III - 45). Petitioner's mere presence at the victim's home, a full 15 hours prior to the discovery of the victim's body, produces no evidence your Petitioner robbed and murdered the victim for his wallet. The State waited a full five (5) years before moving to prosecute a case against Petitioner, and conceded, from its own admission, "we really can't prove the murder,concedely, admittedly," and insufficiently established 'theft'. Your Petitioner's DNA was not the profile contributor, retrieved from the victim's wallet, whose contents were scattered on the road near the victim's home. (R. III - 15; 47). The wallet was forensically tested, and matched three (3) individuals, the victim and two unknown individuals. (R. IV - 40)(R. IV - 53, 54). The sole tangible evidence used by the State to prove 'robbery' was the victim's wallet. In addition, and found near the wallet, were DNA on two paper towels that, at the time of trial, revealed 'unknown' DNA results: (R. IV - 43):

Q. and like, for example, the stain from Paper Towel Number One, which you've got here marked 3-06-AB, you got -- you've actually got the victim was **Excluded**, correct?

A. Yes. That was, that profile was consistent with an **Unknown Male Individual**.

Q. And so in addition to that, Charlene Jackson was checked and Tony Williams. Were they **Excluded** likewise

A. Yes, sir.

Q. And the stain from PAPER TOWEL NUMBER TWO, how about that one? Same result?

A. Yes, sir. That was also consistent with the same **Unknown Male Individual**.

The unknown male individual was subsequently uploaded into the DNA database called CODIS. (R. IV - 60, 61). After trial, but prior to the submission of 'Appellate Briefs' by both the Appellant Attorney as well as the State, said Attorneys were apprised by DPS, in a letter dated 4/23/20, that a **"POSITIVE MATCH"** from DNA Testing were made on the items styled as 03-06, and 03-07, i.e., two (2) blood stained paper towels that were found near the victim's wallet at the crime scene. It was determined the DNA matched a FRANSISCO MORALES, who was found to be in TDCJ on unrelated charges. Both State and Defense filed a 'Joint' "Motion To Abate Appeal" to develop the record on the culpability of MORALES' to the charged offense. On June 9, 2020, the 6th Court of Appeals denied said motions, contending the "Motion" failed to explain how the 6th Court of Appeals have the authority to reinvest the Trial Court with Jurisdiction, or how either party would be prejudiced. The Court was mistaken! See Harris v. State, 818 S.W. 2d 231, (Tex. App. - San Antonio 1991), as precedent for the abatement of appeal. Moreover, the Appeal Court had the power to stay the appeal, while developing the DNA evidence results. See rationale of Rhines v. Weber, 125 S.Ct.1528, (2005). Petitioner was deprived of a meaningful opportunity to prove innocence and pursue exoneration on DNA exclusion. Consequently, your Petitioner asserts the lower court ruling has so far departed from judicial norms, and has so violated due process, as to warrant this Court's intervention and

exercist of its Supervisory Powers to correct a 'fundamental miscarriage of justice' from prevailing against Petitioner. See Rule 10, supra; Murray v. Carrier, supra; Jackson v. Virginia, supra; Nyugen v. United States, supra.

## PRAYER FOR RELIEF

WHEREFORE, PREMISES, ARGUMENTS and AUTHORITIES CONSIDERED, Petitioner contends due process and the interest of justice warrants the GRANT of his 'Petition For Rehearing", to alter a fundamental miscarriage of justice from prevailing against one who is actually innocent. Murray, supra. The denial of 'Rehearing' would prejudice Petitioner's rights to fundamental fairness. The State wholly failed to establish the offense charge, and produced no evidence, from its own admission, to establish every fact necessary to constitute the offense charged. This Court should Grant REHEARING, in the interest of justice, as this Court has traditionally Granted REVERSAL when the Court fails to establish Every Element of the offense, and when the same would alter a fundamental miscarriage of justice. Since the lower court's ruling conflicts with this Court's precedence, RULE 10, RULES OF THIS SUPREME COURT, warrants intervention from this Court by the Granting of REHEARING.

Respectfully submitted,

Tony Gene Williams Sr.

TONY GENE WILLIAMS, Sr.
Petitioner, Pro Se
TDCJ #2300397
Memorial Unit
59 Darrington Rd.
Rosharon, Tx. 77583

## AFFIDAVIT

PURSUANT TO CHAPTER 132, V.T.C.A., CIVIL PRACTICE AND REMEDIES CODE; AND 28 U.S.C. § 1746:

I, TONY GENE WILLIAMS, Sr., Petitioner, Pro Se, being currently confined at the Memorial Unit, located here in Brazoria County, Texas, have read the foregoing 'Petition For REHEARING on Writ Of Certiorari', filed in good faith, and hereby DEPOSE and DECLARE under the PAIN AND PENALTIES OF PERJURY the foregoing "PETITION FOR REHEARING" is true and correct to the best of Petitioner's belief:

Executed on this the 29th day of July, 2022.

Tony Gene Williams, Sr.
TONY GENE WILLIAMS #2300397
Petitioner, Pro Se

## CERTIFICATE OF SERVICE

I, TONY GENE WILLIAMS, Sr., files this his 'Petition For REHEARING', in good faith, hereby CERTIFY that a true and correct legible copy of the foregoing 'Petition' was served upon the below named and listed parties, in an envelope, with pre-paid postage affixed thereto, to: UNITED STATES SUPREME COURT, 1 1st St., N.E., Washington, DC, 20543-0001, on this the 29th day of July, 2022.

Tony Gene Williams, Sr.
TONY GENE WILLIAMS, Sr.
Petitioner, Pro Se, #2300397

## CERTIFICATE OF PRESENTMENT

That Petitioner hereby Certify that his "Petition For Rehearing On Writ OF Certiorari" is presented in good faith, and not for delay. Said "REHEARING" request is not filed to vex, harass or otherwise disrupt this Court's established Court proceedings. Petitioner presents this his "Petition" in his sincere effort to alter a 'Manifest Miscarriage of Justice' from prevailing against one who is 'actually innocent' and whose conviction was patently obtained in breach of the United States Constitution and Federal Law, as determined by the United States Supreme Court. Rule 10, of Rules of the Supreme Court, warrants this Court's intervention, in light of the lower court ruling that conflicts with this Court's precedence.

Tony Gene Williams, Sr.

TONY GENE WILLIAMS, Sr.,
Petitioner, Pro Se
TDCJ #2300397
Memorial Unit
59 Darrington Rd.
Rosharon, Tx. 77583

## CERTIFICATE OF COMPLIANCE

Petitioner presents this his 'Petition For Rehearing On Writ of Certiorari' to the Court, type-written with a PWP 2500 Personal Word Processor. Said item does not contain a word or line count, and Petitioner verifies compliance pursuant to Rule 33 (2)(a), on 8½ x 11" white typing paper.

Tony Gene Williams Sr.

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