

No. _____
IN THE
SUPREME COURT OF THE UNITED STATES

JASON EARL WHITE,
PETITIONER,

VS

UNITED STATES OF AMERICA,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI,

FIFTH CIRCUIT COURT OF APPEALS AND
TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

For the Petitioner Pro Se:

JASON EARL WHITE

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Coffield Unit

2661 FM 2054

TENNESSEE COLONY, TEXAS
75884

PETITIONER PRO SE

QUESTIONS PRESENTED

I.

BOTH THE FIFTH CIRCUIT COURT OF APPEALS AND THE TEXAS COURT OF CRIMINAL APPEALS HAVE SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH DEPARTURE BY A LOWER COURT AS TO CALL FOR EXERCISE OF THE SUPREME COURT'S ~~EXERCISE~~ POWERS TO PROHIBIT VINDICTIVE PROSECUTION.

II.

THE FIFTH CIRCUIT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH DEPARTURE BY A LOWER FEDERAL DISTRICT COURT AS TO CALL FOR SUPREME COURT'S SUPERVISORY POWERS ON THE ISSUE OF REASONABLE EXCEPTIONS TO THE A.E.D. P.A.'S ONE YEAR STATUTE OF LIMITATIONS.

III.

THE FIFTH CIRCUIT COURT OF APPEALS AND THE TEXAS COURT OF CRIMINAL APPEALS HAVE DECIDED AN IMPORTANT ~~FEDERAL~~ QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT WITH RESPECT TO THE ISSUE OF WHAT LEVEL OF INEFFECTIVENESS OF COUNSEL CONSTITUTES A CONSTRUCTIVE DENIAL OF COUNSEL.

IV.

BOTH THE FIFTH CIRCUIT COURT OF APPEALS AND THE TEXAS COURT OF CRIMINAL APPEALS HAVE SO DEPARTED FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH DEPARTURE BY A LOWER COURT AS TO CALL FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWERS TO PROHIBIT A PRISON WARDEN'S RULE FOR CALCULATING GOOD TIME AND PRIOR CUSTODY TIME TO BE APPLIED TO AN INMATE'S SENTENCING FROM TRUMPING THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS OF LAW.

RELATED CASES

STATE VS JASON EARL WHITE, NO. 8888 & 10077
IN the 355th DISTRICT COURT, HOOD COUNTY, TEXAS
RACON H. WALTON, PRESIDING; Judgment 10/3/2003

JASON EARL WHITE V STATE, NO 2-07-488 ~~488~~,
2ND COURT OF APPEALS (FT WORTH) REVERSED 09/15/20
(NO REA FILED; NO PDR FILED BY THE STATE)
JASON EARL WHITE V STATE, NO. 2-07-99 & 90
2ND COURT OF APPEALS (FT. WORTH) AFFIRMED 05/29/20

RELATED CASES (continued)

EX PARTE JASON EARL WHITE, PD-0493-08
ON Petition FOR DISCRETIONARY REVIEW
DISMISSED; 01/14/2009 DENIED 02/06/2009

EX PARTE JASON EARL WHITE, NO. W-8888-1 & W-10077-1
(filed 06/12/2018) Returned to Court of Crim. App.
Relief Denied 01/30/2019; Rel Den. 07/23/2019

EX PARTE WHITE, U.S. DISTRICT COURT, FORT WORTH
DIVISION, (UNPUBLISHED)

EX PARTE WHITE, U.S. COURT of Appeals, Fifth
Circuit (October 28, 2021) Unpub.
NO WRITTEN opinion (NO RELIEF GRANTED)
(FINAL Disposition: November 17, 2021)

LIST OF PARTIES

JASON EARL WHITE - CRIMINAL Defendant - ~~Appellant~~
STATE OF TEXAS - Respondent in Lower Courts
Robert Christian - state prosecutor
Judge RALPH WALTON - State District Judge
LANCE EVANS - CHALLENGED DEFENSE COUNSEL
DR. JAYNE COFFMAN - CHALLENGED STATE EXPERT
LUNNEY, SMITH & CONRAD - CHALLENGED COUNSEL

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STATUTES: TEXAS
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UNITED STATES STATUTES & CONSTITUTION
28 USC 2244 U.S. CONST. AMEND VI, Robsey
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IN THE
SUPREME COURT of the UNITED STATES
Petition for A Writ of CERTIORARI

Petitioner Respectfully prays a writ of certiorari issues to Review the Judgment below:

The opinion of the United States Court of Appeal was denial of habeas corpus Relief without written order.

The opinion of the United States District Court for the Northern District of Texas, Fort Worth Division was unpublished and denied habeas corpus Review for violation of the A.E.D.P.A. one year statute of limitations ignoring that issue was decided in Petitioner's favor by the Texas Court of Criminal Appeals. GRANTING Rehearing, Review on the MERITS, DENIAL of Habeas Corpus Relief.

THE OPINION OF THE TEXAS COURT OF CRIMINAL APPEALS IN DENYING RELIEF IS UNPUBLISHED & THE REHEARING OF THAT DECISION IS UNPUBLISHED BUT ESTABLISHES THE COURT DENIED THE EFFORT TO APPLY 28 USC 2244 OR "LAKES" TO NOT REHEAR THE MERITS, CONVERSELY THE STATE'S HIGHEST COURT REHEARD THE MERITS ESTABLISHING NO STATUTE OR EQUITABLE DENIAL OF REVIEW APPLIES IN THIS CASE.

JURISDICTION

THE DATE ON WHICH THE FIFTH CIRCUIT COURT OF APPEALS DECIDED MY CASE IS BELIEVED TO BE (MY FILE BEING RETAINED BY MY FORMER LAWYER) OCTOBER 28, 2011 WITH NO MOTION FOR REHEARING BEING FILED WITHIN 14 DAYS OF JUDGMENT. THE JURISDICTION OF THIS COURT IS INVOKED, BEING 90 DAYS THEREAFTER AND EXTENSION OF TIME PRAYED IN THIS PETITION, PURSUANT TO 28 USC § 2254.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOKED

U.S. CONST. AMEND V

U.S. CONST. AMEND VII

TEX. CONST. ART I, see XIV

U.S. CONST. AMEND V, XIV

TEX. CODE CRIM. PROC. 36.29(a)

ART. V see XIII TEX. CONST.

28 USC 2244

ART. 11.07 Tex Code Crim Proc

29 USC 2254

STATEMENT OF THE CASE

PETITIONER WAS CONVICTED OF SEXUALLY ASSAULTING A YOUNG GIRL WHO ALLEGED THE ASSAULT OCCURRED IN JUNE, 2002 WHEN SHE OUTCRIED IN OCTOBER, 2002. IN ADDITION TO APPELLATE COURT NOTICING THE GIRL WAS PROMPTED IN HER TESTIMONY (NO ACTION TAKEN) PETITIONER WAS CHARGED WITH COMMITTING ONE CRIME IN THREE WAYS. FORENSICS DID NOT CONFIRM THE CRIME, BUT A WITNESS WHO FOLLOWED NO ACCEPTABLE DIAGNOSTICS WAS ALLOWED TO TESTIFY AS A FORENSIC EXPERT BECAUSE "SHE BELIEVED THE CHILD... ALWAYS" CONVICTED THOUGH PROSECUTOR AND JUDGE INJECTED REVERSIBLE ERROR OF VIOLATION OF CONSTITUTIONAL RIGHT TO UNANIMOUS VERDICT, PETITIONER SUCCESSFULLY APPEALED, AND ON RE-TRIAL OF A 40 YEAR SENTENCE PETITIONER'S COUNSEL PERMITTED RE-TRIAL ON A NEW INDICTMENT ADDED TO THE RE-TRIAL, A 65 YEAR SENTENCE, WITHOUT OBJECTION. THOUGH STATE HABEAS WAS 9 YEARS AFTER DIRECT APPEAL THE REASONS GIVEN FOR THE DELAY WAS SUFFICIENT FOR TEXAS' HIGHEST COURT TO EXCLUDE THE DELAY, TOLL THE TIME AND REACH THE MERITS. FEDERAL REVIEW PRECLUDED REVIEW BASED ON 28 USC 2244 WITH NO REVIEW OF RATIONALE FOR 28 USC 2244 OR PETITIONER'S EXCEPTIONS OR PREJUDICE TO PETITIONER.

REASONS FOR GRANTING THE PETITION

I. PETITIONER WAS CONVICTED OF ONE CRIME ALLEGED TO HAVE BEEN COMMITTED IN THREE DIFFERENT WAYS, WITHOUT AN ELECTION MADE, THOUGH DEMANDED, IN VIOLATION OF PETITIONER'S RIGHT TO UNANIMOUS VERDICT OF THE JURY. TEX. CONST. AMEND. II; ART. 36.29(a) TEX. CODE CRIM. PROC. THE LAW WAS CLEAR, UNEQUIVOCAL, THE ELECTION WAS MANDATORY. UNDER TEXAS LAW. O'NEILL V STATE, 746 SW2d 769, 771 (Tex. Crim. App. 1988); CRAWFORD V STATE, 696 SW2d 903, 905 (Tex. Crim. App. 1985); TEX. CONST. ART. II, sec. XIII; Ngou V STATE 175 SW3d 735 (Tex. Crim. App. 2005); MULENDES V STATE, 3, 4 (Tex. Crim. App. 1978). THE VIOLATION WAS OF PETITIONER'S RIGHT TO UNANIMOUS VERDICT AND WAS WELL SETTLED IN TEXAS LAW. YES, AND ELECTED DISTRICT ATTORNEY AND AN ELECTED DISTRICT JUDGE BUDED TO PUBLIC PRESSURE TO FIND AND RUN AWAY SEXUAL PREDATORS.

THAT REFUSAL TO MAKE AN ELECTION WAS INTENTIONAL, WHEN PETITIONER SUCCESSFULLY CHALLENGED HIS CONVICTION, WHITE V STATE, 2005 TEX. APP. LEXIS 7657 (TEX. APP. 5TH DIST. - ~~TEX. APP.~~ NO PET) THE STATE DID NOT APPEAL TO THE STATE'S HIGHEST COURT. THE ELECTED DA RESPONDED BY FILING A NEW INDICTMENT ALLEGING SEVEN SEPARATE CRIMES. SUBJECTING PETITIONER TO LIFE. RE-TRIAL WAS ON REMAND OF ONE CASE, BUT

~~#2~~
Successful appeal resulted in TRIAL ON 7
COUNTS, AND CONVICTION AND SENTENCE, ALSO
LIMITED TO 40 YEARS AS IMPOSED IN TRIAL
#1, RATHER 65 YEARS IMPOSED IN TRIAL #2.
THE JUDGEMENT WAS ALLOWED TO
STAND THROUGHOUT TEXAS' APPELLATE
PROCESS INCLUDING THE STATE'S HIGHEST COURT.
THOSE DECISIONS WERE CONTRARY TO THE
PRECEDENT OF THIS COURT. NORTH CAROLINA
V PEARCE, 395 US 711, 725-26 (1969). THOUGH
REQUESTED IN STATE HABEAS PROCEEDINGS
THE TRIAL JUDGE GAVE NO NON-VINDICTIVE
REASONS FOR ALLOWING THE SECOND TRIAL,
AND NONE EXISTED. THAT TOO WAS
VIOLATIVE OF THIS COURT'S PRECEDENT,
TO ALLOW A HARSHER SENTENCE TO STAND
ON RETRIAL OF A SUCCESSFUL APPEAL OF
A FIRST SENTENCE. TEXAS V MCCOLLUGH,
475 US 1345 N.3 (1986).

THE CONSTITUTIONAL VIOLATION WAS
ALLOWED TO STAND IN FEDERAL COURT, 28 USC 2255,
RELIEF FOR PETITIONER'S VIOLATION OF 28 USC
2244'S ONE YEAR STATUTE OF LIMITATIONS.
(SEE: INFRA). NONETHELESS, THE FIFTH
CIRCUIT COURT OF APPEALS PERMITTED A
VIOLATION OF THIS COURT'S PRECEDENT AFTER
DENYING REVIEW, REVIEW EVEN ON PETITIONER'S
GROUNDS AND FACTUAL BASIS PROVING HIS FAILURE
TO ABIDE 28 USC 2244 WAS NOT UNREASONABLE

TEXAS' HIGHEST APPELLATE COURT, JOINED BY THE FIFTH CIRCUIT COURT OF APPEALS, COMBINED TO SUSTAIN AN OPINION ON AN IMPORTANT QUESTION CONTRARY TO THE PRECEDENT OF THIS SUPREME COURT AND SANCTIONED SUCH VIOLATIONS TO ALL LOWER COURTS, BOTH TEXAS LOWER COURTS AND FEDERAL LOWER COURTS IN THE FIFTH CIRCUIT. THE SANCTION WAS A STATEMENT THAT VINDICTIVE PROSECUTIONS WERE LAWFUL, CONTRARY TO THE PRECEDENT OF THIS SUPREME COURT TO JUSTIFY THIS COURT'S EXERCISE OF ITS SUPERVISORY POWERS TO PREVENT VINDICTIVE PROSECUTIONS.

II. THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT, AEDPA, 28 USC 2244, WAS ENACTED TO ADDRESS A SPECIFIC PROBLEM, NOT REMOTELY CONSISTENT WITH THIS CASE. YET THE FIFTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WITH A GENERALIZED APPLICATION OF THE ONE YEAR STATUTE OF LIMITATIONS AND SANCTIONED SUCH APPLICATION OF BY THE LOWER COURTS SUCH AS TO JUSTIFY THE SUPREME COURT'S SUPERVISORY POWERS. FIRST ISSUES ARE THE ISSUES OF COMITY AND

AND FURTHERING THE PRINCIPLES OF COMITY AND FEDERALISM. THESE PRINCIPLES WERE DISCUSSED BY THIS COURT IN WILLIAMS V TAYLOR, 529 US 420, 436 (2000). TEXAS' HIGHEST APPELLATE COURT, THOUGH ERRONEOUSLY PERMITTING A VINDICTIVE PROSECUTION OF PETITIONER, REVIEWED THE 9 YEAR DELAY FROM PETITIONER'S DIRECT REVIEW ENDING AND THE FILING OF HABEAS CORPUS IN STATE COURT, ON PETITIONING, WHEN PETITIONER CHALLENGED THE "WHITE CARD" NO WRITTEN OPINION TREATMENT OF HIS STATE HABEAS, MADE CLEAR IT HAD REVIEWED THE ENTIRE RECORD AND REFUSED TO DISMISS ON VIOLATION OF THE ONE YEAR STATUTE OF LIMITATIONS AND REACHED THE MERITS OF PETITIONER'S CLAIMS.

THE FEDERAL COURTS BOTH, IN UNPUBLISHED TREATMENTS, DECIDED THE CASE ON DENIAL OF A.E.D.P.A.'S ONE YEAR STATUTE OF LIMITATIONS. BOTH COURTS SANCTIONED THE DENIAL OF REVIEW THEREBY SANCTIONING VINDICTIVE PROSECUTIONS.

IT IS CLEAR THE UNDERPINNINGS OF PASSAGE OF THE AEDPA GO BACK TO CONGRESS' CONCERN IN 1908 OF THE

OF FRIVOLOUS HABEAS CORPUS PETITIONS WERE FILED BY DEATH ROW INMATES DELAYING EXECUTIONS. SEE: BAREFOOT v ESTELLE, 463 U.S. 880, 892 N.3 (1983). THIS COURT RECOGNIZED IN ESTELLE THAT IN ENACTING AEDPA CONGRESS WAS CONFIRMING THE NECESSITY AND THE REQUIREMENT OF DIFFERENTIAL TREATMENT OF THOSE APPROPRIATELY DESERVING OF ATTENTION FROM THOSE THAT PLAINLY DO NOT. REFUSAL TO EVEN REVIEW A CLAIM CANNOT BE PRO FORMA OR AS A MATTER OF COURSE. MILLER-EL v COCKRELL, 537 US 382 (2003); SLACK v MCDANIEL, 529 US 473, 484 (2000). CONGRESS' INTENT IN ENACTING THE ONE YEAR STATUTE WAS NOT INTENDED TO, PRO FORMA, DISQUALIFY ALL INMATES WHO FILED OUTSIDE THE ONE YEAR STATUTE OF LIMITATIONS. REASONABLE EXPLANATIONS FOR THE DELAY WOULD EXCEPT LATE FILING, THIS PRINCIPLE, AND THE CONSIDERATIONS OF COMITY AND FEDERALISM COMBINED TO EXCEPT PETITIONER'S CASE FROM DISMISSAL WITHOUT REVIEW, AND THE TWO FEDERAL COURTS VIOLATED THIS COURT'S PRECEDENT IN WILLIAMS v TAYLOR, SUPRA. BECAUSE NO CONSIDERATION WAS GIVEN TO TEXAS' HIGHEST APPELLATE COURT REVIEW,

AND ACCEPTED AS REASONABLE PETITIONER'S PROOF OF REASONABLE EXPLANATION FOR HIS 9 YEAR DELAY. COMITY AND FEDERALISM CONCERNS MARK FEDERAL COURT'S TREATMENT AS CONTRARY TO PRECEDENT AS SUCH TREATMENT SANCTIONS LOWER COURT DISMISSAL OF LATE FILED CLAIMS AS ROUTINE, A MATTER OF COURSE, WHEN SUCH WAS NEVER CONGRESS' INTENT.

PROOF OF THE DELAY BEING A "REASONABLE" DELAY IS AN EXPLANATION THAT SHEDS LIGHT ON THE REALITY OF BEING POOR IN AMERICAN JUDICIAL SYSTEM'S RETARD. SHE IS CHERYL COOK, PETITIONER'S AUNT.

CHERYL COOK, UNDER OATH, AFFIRMED SHE WAS PETITIONER'S AUNT, HIS MOTHER'S SISTER. SHE WORKS IN THE RESTAURANT INDUSTRY, HER SISTER AS A VETERINARY ASSISTANT. THEY BOTH ARE ON MODERATE MEANS. SHE EXPLAINS THE FIRST TRIAL COST \$27,000 IN LEGAL FEES. AN ADDITIONAL \$8000 IN FEES HAD TO BE PAID BY PETITIONER'S MOTHER. THE FIRST APPEAL WAS \$16,000 IN ATTORNEY FEES, \$2,000 IN TRANSCRIPT COSTS. FEES AND COSTS FOR THE RE-TRIAL WERE \$23,000, AND AT THAT POINT THE FAMILY WAS OUT OF MONEY.

COUNSEL WAS APPOINTED FOR THE SECOND APPEAL. COUNSEL DID NOT FILE FOR DISCRETIONARY REVIEW, PETITIONER DID ON HIS OWN. THE PDR WAS LATE DUE TO PRISON MAIL CONCERNS, AND WHEN AN EXTENSION WAS GRANTED PETITIONER KNEW. HOWEVER, PETITIONER HAS NO ATTITUDE FOR MATTERS OF LAW AS WERE EXHIBITED IN HIS PRO SE PDR.

WILLING, BUT NOT REALLY FINANCIALLY ABLE TO AFFORD TO PAY FOR PETITIONER COUNSEL, CHERYL COOK BEGAN A SEARCH FOR PRO BONO ASSISTANCE. SHE CONTACTED THE TEXAS CENTER FOR ACTUAL INNOCENCE AND THE A.C.L.U. WITHOUT SUCCESS. SHE WAS REFERRED TO THE TEXAS CRIMINAL DEFENSE LAWYERS' ASSOCIATION - INNOCENCE ASSISTANCE PROJECT. SHE CONTACTED THE PACE POST-CONVICTION PROJECT. PETITIONER'S CASE MET NONE OF THESE INNOCENCE PROJECT'S CRITERIA FOR ASSISTANCE.

AFTER THE SECOND CONVICTION THERE WAS LITERALLY NO MORE FAMILY MONEY. COUNSEL WAS APPOINTED FOR THE THE SECOND APPEAL. AFTER APPELLATE COUNSEL ABANDONED THE APPEAL AND FAILED TO FILE A PETITION FOR DISCRETIONARY REVIEW MS.

COOK FOUND THOMAS VAN ORDEN, A SUSPENDED LAWYER, MS. COOK OFFERED TO PAY HIS BAR DUES TO RE-INSTATE MR. VAN ORDEN'S LICENSE, BUT THE OFFER WAS NOT ACCEPTED. PDR WAS FILED BY PETITIONER WITHOUT SUCCESS, BUT DEMONSTRATING ONE REMEDY. PETITIONER'S HIGH SCHOOL EDUCATION COULD NOT LEAD HIM TO AN UNDERSTANDING OF LEGAL PRINCIPLES SUFFICIENT TO CHALLENGE HIS CONVICTION.

TEXAS HAS A ONE-CHALLENGE RULE. PETITIONER HAD ONE SHOT AT RELIEF. IF HE FAILED THERE WOULD BE NO SECOND BITE AT THE APPLE IN TEXAS.

PETITIONER HAD TO WAIT. AUNT CHERYL WENT TO WORK LOOKING FOR A MIRACLE. SHE CONTACTED THE INNOCENCE PROJECT IN NEW YORK, THE INNOCENCE PROJECT AT UH LAW SCHOOL, THEN EVERY INNOCENCE PROJECT AT EVERY LAW SCHOOL IN TEXAS. PETITIONER'S CASE DID NOT MEET THEIR CRITERIA.

LAWYERS WERE CALLED OFFERING TO PAY ON AN INSTALLMENT PLAN, BUT NO LAWYER ACCEPTED THE OFFER. BARRY SCHECK WAS APPROACHED, BUT MR. SCHECK WAS INTERESTED ONLY IN DNA CASES.

IN 2010 MS. COOK CONTACTED VINSON & ELKINS IN HOUSTON AND WAS STERNLY REJECTED. SHE CONTACTED THE RUDOLPH MACARTHUR JUSTICE CENTER. NO HELP. SHE CONTACTED ALFRED, MOROKO & GIBBS AGAIN, NO HELP. SHE CONTACTED HABERN, O'NEILL & PANGAN IN HUNTSVILLE. HABERN HAD BEEN RECOMMENDED, BUT HABERN GETS HIS FULL FEE UP FRONT, WITHOUT A PAID IN FULL FEE HE WAS NOT INTERESTED. SHE THEN CONTACTED THE TEXAS INNOCENCE NETWORK, BUT PETITIONER'S CASE "DID NOT MEET THE CRITERIA".

THEN MS. COOK HAD TO TAKE CARE OF HER MOTHER AND HER HEALTH CONTINUED TO DECLINE. SHE COULD FIND ONLY POVERTY LEVEL JOBS DURING HER CARE FOR HER MOTHER. DURING THIS TIME SHE CONTACTED THE JUSTICE DEPARTMENT'S CIVIL RIGHTS DIVISION, BUT SHE LEARNED THE DEPARTMENT WAS NOT INTERESTED IN THE PROPRIETY OF POST-CONVICTION INVESTIGATIONS.

ABOUT THIS TIME MS. COOK'S MOTHER DIED. SHE LEFT HER A MODEST INHERITANCE THE MAJORITY OF WHICH WAS SPENT TO HIRE PAUL LOONEY FOR

HER NEPHEW'S Post-Conviction Fight.

IT SHOULD BE NOTED PETITIONER WAS INCARCERATED ON A CHAD MOLESTATION CHARGE. INMATES IN PRISON ON THESE CHARGES ARE KNOWN AS "CHOMOS" AND ARE SUBJECTED TO BEATINGS AND OTHER ABUSE. TEXAS COURTS HAVE RECOGNIZED THIS REALITY OF PRISON LIFE ON NUMEROUS OCCASIONS. AS A RESULT, PETITIONER COULD NOT SEEK ASSISTANCE OF A PRISON WRIT WRITER FOR FEAR OF HAVING HIS CHARGES KNOWN AND THE PHYSICAL ABUSE THAT WOULD FOLLOW. HIS OUT DATE WAS 2071 AND COULD NOT LIVE THE NEXT 40 YEARS AS A "CHOMO" IN PRISON.

CHERYL COOK AND HER FAMILY NEVER SLEPT ON THEIR RIGHTS IN SEEKING LEGAL ASSISTANCE FOR HER NEPHEW. THEY SPENT THEIR SAVINGS FROM YEARS OF SAVING TO PAY LAWYERS AND COSTS, A TOTAL OF \$68,000, WIPING OUT THE SAVINGS OF TWO FAMILIES. SHE SOUGHT FREE LEGAL ASSISTANCE, PAYMENT PLAN LEGAL ASSISTANCE, INNOCENCE PROJECTS AND TOP LAW FIRMS IN THE COUNTRY. HER

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Nephew could not even seek "WRIT WRITER" help. Her first expense after her mother's death left her a small inheritance was to spend \$55,000 on a lawyer for post-conviction assistance for her nephew.

THE ISSUES DEVELOPED WERE NEVER CHALLENGED AND NEVER DETERMINED JUDICIALLY AS BEING FRIVOLOUS. PETITIONER'S CLAIMS, HIS CIRCUMSTANCE IN FILING 9 YEARS AFTER DIRECT APPEAL, ARE NOWHERE CLOSE TO THE HISTORY OF DEATH ROW INMATES FILING REPETITIOUS FRIVOLOUS PLEADINGS FOR THE SOLE PURPOSE OF DELAYING THEIR EXECUTION.

THE TEXAS COURT OF CRIMINAL APPEALS REVIEWED THE "WHOLE RECORD" AND REPEATED THE MERITS. FEDERAL COURTS WERE BOUND BY CONSIDERATIONS OF COMITY AND FEDERALISM TO ABIDE THE RUNKS OF A STATE'S HIGHEST APPELLATE COURT. THE ISSUE THAT PETITIONER'S CASE AND THE CIRCUMSTANCES OF HIS CASE DID NOT EQUATE TO DISMISSAL UNDER 28 AEDRA.

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THE FIFTH CIRCUIT COURT OF APPEALS, NOR THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION, EVER JUSTIFIED ENFORCEMENT OF THE AEDPA AS ANYTHING OTHER THAN A "PRO FORMA" MATTER OF COURSE APPLICATION CONTRARY TO THE PRECEDENT OF THIS COURT. SUCH DECISION-MAKING AND SANCTIONING OF LOWER COURT'S AVOIDING SUBSTANTIAL CLAIMS OF VIOLATIONS OF CONSTITUTIONAL RIGHTS JUSTIFIES THIS SUPREME COURT EXERCISING ITS SUPERVISORY POWERS TO STOP MISINTERPRETATION AND MISAPPLICATION OF THE LAW AS ANNOUNCED BY THIS SUPREME COURT.

NO FEDERAL COURT REVIEWED WHAT THE TEXAS COURT OF CRIMINAL APPEALS DETERMINED TO BE A REASONABLE DELAY SUCH AS TO EXCLUDE PETITIONER'S HABEAS PETITION FROM PRO FORMA AEDPA APPLICATION. NO FEDERAL COURT FOUND PETITIONER'S CLAIMS OF VINDICTIVE PROSECUTION, INEFFECTIVE ASSISTANCE OR DENIAL OF DUE PROCESS TO BE FRIVOLOUS OR UNPROVOKED.

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THE FIFTH CIRCUIT'S DISMISSAL FOR PRO FORMA APPLICATION OF AEDRA FACILITATED AFFIRMANCE OF THESE CONSTITUTIONAL VIOLATIONS SANCTIONING SUCH PRO FORMA, NO REVIEW, DISMISSAL OF SUBSTANTIAL CONSTITUTIONAL CLAIMS CONTRARY TO THIS COURT'S PRECEDENT. THE LAW ANNOUNCED BY THIS SUPREME COURT IS TO BE FOLLOWED, AND SANCTIONING SUPREME COURT PRECEDENT AS DE MINIMIS JUSTIFIES EXERCISE OF THIS COURT'S SUPERVISORY AUTHORITY TO STOP SUCH TREATMENT OF SUPREME COURT PRECEDENT.

III. THE FIFTH CIRCUIT COURT OF APPEAL AND THE TEXAS COURT OF CRIMINAL APPEALS TO ENTER AN OPINION ON AN IMPORTANT QUESTION OF FEDERAL LAW CONTRARY TO TWO OPINIONS AND WELL ESTABLISHED PRECEDENT OF THIS COURT THEREBY SANCTIONING TO LOWER COURTS THAT THE LEGACY OF INEFFECTIVE COUNSEL IS TRUE JUSTIFYING THE EXERCISE OF THIS COURT'S SUPERVISORY AUTHORITY. PRISONER ACROSS THIS COUNTRY, ESPECIALLY IN TEXAS, ALL KNOW THE TRUTH OF STRICKLAND v WASHINGTON 466 US 668, 687-91 (1984) AND UNITED STATES v CRONK,

466 US 648 (1984). In 1984 the Court decided these two cases to settle the nationwide inconsistency over two cases, two situations, involving with counsel failed to render assistance. Elected of professional attorneys, and with counsel's assistance was so infirm as to leave the responsible jurist to conduct the defense was constructively denied counsel.

Petitioner's counsel permitted the elected District Attorney, after petitioner's successful appeal of his first conviction, where counsel was counsel for petitioner, to return an indictment charging petitioner with 7 independent counts of criminal conduct arising from the same nucleus of operative fact as that tried in the first trial, beginning petitioner to once again face life in prison. There was no objection that the new indictment was, ironically, within 180 days from commencement of the action in order, 2002, see: Art. 32.01 Tex. Code Crim. Proc., or that the prosecution was vindictive and violative of North Carolina v. Pearce, supra. Trial commenced with counsel bound have pursued "pre-trial matters (curias", or large "kick" fees, no. PD-1007-15 (Tex. Crim. App. 2016) prior to trial, and had the indictment successfully advanced. There was

NO OBJECTION. THERE WAS NO OBJECTION TO THE THE APPARENT INTENTIONAL INJECTION OF ERROR IN TRIAL #1 TO FACILITATE THE PROSECUTION'S FILING OF THE NEW INDICTMENT FOR TRIAL #2. THE ELECTED DISTRICT ATTORNEY TOOK ADVANTAGE OF DEFENSE COUNSEL, AND STILL NO OBJECTION. THE TRIAL COURT FACILITATED THE CONSTITUTIONAL VIOLATION WITHOUT OBJECTION.

ON A STRICKLAND SCALE PETITIONER HAD CAUSE FOR CHALLENGE BECAUSE THERE WERE SEVERAL AVAILABLE LEGAL CHALLENGES TO THE NEW INDICTMENT, AND THEY COULD HAVE BEEN RAISED IN PRE-TRIAL HABEAS CORPUS AND FINAL DECISION COULD HAVE BEEN REMOVED FROM THE APPARENTLY COMPLICIT TRIAL COURT JUDGE. BUT NO, COUNSEL DID NOTHING THOUGH THE ERROR WAS COMMENCED ON DEFENSE COUNSEL'S PERFECTING ERROR IN TRIAL #1. PETITIONER, ON STRICKLAND'S SECOND PRONG OF THIS COURT'S LEGENDARY "TWO PRONG TEST" FOR INEFFECTIVE COUNSEL, WAS CLEARLY PREJUDICED HE WAS SENTENCED TO 65 YEARS AND LOST FOUR YEARS OF TIME ACTUALLY SERVED ON THESE CHARGED CRIMES, INFR., AS WELL AS, GOOD CONDUCT TIME EARNED, INFR. HAD PETITIONER LOST HIS APPEAL FROM TRIAL #1

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HE WOULD HAVE SIMPLY LOST AND BEEN SERVING 40 YEARS w/ CREDIT FOR HIS TIME SERVED AND GOOD CONDUCT TIME EARNED. HOWEVER, PETITIONER WON HIS APPEAL, BUT HE LOST WORSE. HE WAS NOW SERVING 65 YEARS, NOT 40, AND HE WAS, AGAIN ORCHESTRATED, SERVING HIS SENTENCE WITHOUT EARNED PRIOR CUSTODY CREDIT FOR TIME SERVED IN CUSTODY AND LOST GOOD TIME CREDIT FOR BEING A MODEL PRISONER.

HOWEVER, THIS WAS NOT THE BOTTOM OF COUNSEL'S INEFFECTUENESS BARREL. DR. JAYNE COFFMAN WAS ALLOWED TO TESTIFY AS AN EXPERT WITNESS, AND HER TESTIMONY WAS NOT IMPETACHED. THOUGH SHE TESTIFIED TO OPINIONS NOT BEING BASED ON EXPERT ANALYSIS, RATHER HER TESTIMONY WAS A PRODUCT OF PERSONAL CHOICE. "SHE ALWAYS BELIEVED THE CHILD" IN CHILD SEXUAL ASSAULT CASES.

AS AN EXPERT DR. JAYNE COFFMAN COULD HAVE BEEN IMPETACHED. DEFENSE COUNSEL MADE NO EFFORT AT IMPETACHMENT FOR FEAR OF ANTAGONIZING THE JURY BECAUSE DR. COFFMAN WAS A RENOWNED MEMBER OF THE COMMUNITY FOR HER

WORK WITH CHILD VICTIMS OF ALL SORTS OF ABUSE. DEFENSE COUNSEL COULD HAVE PRAISED DR. COFFMAN FOR HER LEGENDARY TREATMENT OF CHILD VICTIMS, BUT HE COULD HAVE CHALLENGED, AGAIN PRE-TRIAL HER PROFESSIONAL OPINIONS AS BEING NOT BASED IN SCIENCE BUT ON OPINION DRAWN FROM WORKING WITH CHILD VICTIMS.

DEFENSE COUNSEL FAILED TO CROSS EXAMINE OR (1) FORENSIC EVIDENCE FAILED TO CORROBORATE THE CHILD'S CLAIM OF SEXUAL ABUSE. THE CHILD TESTIFIED IN OCTOBER, 2002 TO CONTINUOUS ACTS OF SEXUAL MISCONDUCT BEGINNING IN JUNE, 2002 AND BEFORE. VAGINAL AND ANAL PENETRATION REPEATEDLY FOR MONTHS WAS THE TESTIMONY. HOWEVER, THE CHILD'S HYMEN WAS INTACT. HER ANAL CAVITY SHOWED NO SIGNS OF PENETRATION. FORENSIC EXAMINATION EVIDENCE CORROBORATED PETITIONER'S PLEA OF NOT GUILTY.

IN ADDITION, DR. COFFMAN TESTIFIED IN TRIAL #1, SO COUNSEL COULD HAVE CHALLENGED HER DIAGNOSTIC TECHNIQUES AND DIAGNOSTIC OBSERVATIONS AND CONCLUSIONS AS UNSUPPORTED IN THE MEDICAL COMMUNITY IN GENERAL, BUT

SPECIFICALLY, HER DIAGNOSTIC METHODS AND FORENSIC PATHOLOGY CONCLUSIONS WERE UNSUPPORTED IN THE COMMUNITY OF EXPERTS SPECIFICALLY ENGAGED IN THE FORENSICS OF CHILD SEXUAL ABUSE. NUMEROUS PROFESSIONAL JOURNALS WRITTEN BY QUALIFIED EXPERTS IN THE FIELD CONTRADICT DR. COFFMAN'S TESTIMONY, AND NONE WAS USED BY TRIAL COUNSEL TO IMPERACH HER.

"CAUSE" IS EMPIRICAL. PETITIONER WAS LEFT WITH DR. COFFMAN'S OPINIONS BEING BASED ON WHAT WAS TOLD TO HER BY THE CHILD BEING USED TO, EXPERT OPINION, CORROBORATE THE CHILD WHEN FORENSICS CLEARLY IMPERACH THE CHILD'S CLAIMS OF ABUSE. AGAIN, DEFENSE COUNSEL DID NOTHING, AND THE CHILD'S TESTIMONY OF ABUSE WAS ALLOWED TO BE CORROBORATED WHEN NO ABUSE WAS PROVEN BY THE FORENSICS. DR. COFFMAN WAS TO BE HONORED BY HER TREATMENT OF CHILD ABUSE VICTIMS, BUT NOT ALLOWED TO TESTIFY AS AN EXPERT WITNESS BECAUSE SHE IGNORED SCIENCE IN DEFERENCE TO WHAT A CHILD REPORTED. FORENSIC SCIENCE PROVED THE CHILD LIED. NO CHALLENGE.

UNITED STATES v. CRONIC ADDRESSES THE ISSUE OF WHEN DEFENSE COUNSEL IS SO INEFFECTIVE AS TO CONSTITUTE A TOTAL CONSTRUCTIVE DENIAL OF COUNSEL. THIS COURT HELD IN CRONIC THE TOTAL CONSTRUCTIVE DENIAL OF COUNSEL OCCURS WHEN COUNSEL DOES NOT PUT UP A "SUBSTANTIAL DEFENSE TO THE STATE'S CASE". DEFENSE COUNSEL BY HIS INACTION, CONSTRUCTIVELY DENIED COUNSEL FOR PETITIONER. THERE WAS NO DEFENSE TO THE SECOND INDICTMENT CONSTITUTING VINDICTIVE PROSECUTION AN ACTUALLY RESULTING IN A HARSHER SENTENCE THAN THE FIRST AFTER A SUCCESSFUL APPEAL. THAT IS THE COURT'S TEXTBOOK VINDICTIVE PROSECUTION. FURTHER, COUNSEL'S FEAR OF DR. COFFMAN WAS SUFFICIENT TO BY FAILURE TO CROSS EXAMINE HER, PUT UP NO DEFENSE, MUCH LESS A SUFFICIENT CHALLENGE, TO THE CHILD'S CLAIM OF SEXUAL ABUSE. THE CHILD'S HYMEN WAS INTACT. HER ANUS SHOWED NO SIGNS OF PENETRATION. THE CHILD'S CLAIMS OF MONTHS OF ABUSE SHOULD HAVE BEEN CHALLENGED. AGAIN, CONSTRUCTIVE DENIAL OF COUNSEL

WAS EMPIRICAL. THE HIGHEST APPELLATE COURT IN TEXAS, ALONG WITH THE FIFTH CIRCUIT COURT OF APPEALS ALLOWED A CONVICTION AND 65 YEAR SENTENCE TO SURVIVE A LAWYERS FEAR OF REPRISAL AS THE ONLY EXPLANATION FOR HIS FAILURE TO RENDER ASSISTANCE EXPECTED OF PROFESSIONAL ATTORNEYS AND SIMPLY PUT UP A SUFFICIENT ADVERSARY CHALLENGE TO THE STATE CASE, ESPECIALLY, WHEN THAT CHALLENGE IS SUPPORTED BY THE EVIDENCE COUNSEL INTENTIONALLY SUPPRESSED BY NOT PURSUING.

THIS COURT DID ALL THAT COULD BE EXPECTED IN 1984 TO SETTLE THE ISSUE OF COUNSEL'S PERFORMANCE. IN TEXAS THERE IS A SYSTEM OF COURT APPOINTED COUNSEL BEING APPOINTED "LAWYER OF THE WEEK". THESE LAWYERS TAKE A "CHAIN" OF INMATES, OF 20 DEFENDANTS, AND THE FASTER THIS LAWYER CAN EXTRACT PLEAS OF GUILTY FROM THESE DEFENDANTS THE MORE THIS LAWYER CAN BE APPOINTED "LAWYER OF THE WEEK" AND BE PAID HANDSOMELY FOR THE JOB DONE.

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THIS IS THE REALITY. THE CRIMINAL JUSTICE SYSTEM PERMITS EN MASSE CLEARING OF DOCKETS BY LAWYERS EXTRACTING PLEAS OF GUILTY AS OPPOSED TO RESEARCHING THE APPLICABLE LAW, INDEPENDENTLY INVESTIGATING THE FACTS OF THE CASE, INTERVIEWING WITNESSES, FINDING DEFENSE WITNESSES, i.e., DOING THE JOB THIS COURT EXPECTS OF CRIMINAL DEFENSE PROFESSIONALS.

THE SYSTEM HAS SANCTIONED TREATING THIS COURT'S PRECEDENT AS DE MINIMIS, INAPPLICABLE, RIDICULOUS IN LIGHT OF CURRENT REALITIES. LOWER COURTS IGNORE THIS COURT'S PRECEDENT, AND THIS COURT MUST EXERCISE ITS SUPERVISORY POWERS TO REEL IN THE OFFENSIVE TREATMENT OF THE LAW PRONOUNCED BY PRECEDENT. TRIAL LAWYERS CANNOT BE SANCTIONED TO INTENTIONALLY NOT DO THEIR JOBS FOR FEAR OF REPRISAL, OR FROM A SIMPLE AVERSION FOR PROFESSIONAL RESPONSIBILITY WHEN "LAWYER FOR THE WEEK" LOOMS LIKE A SIREN'S SONG ON THE DAY TO DAY HORIZON.

II. THE FIFTH CIRCUIT COURT OF APPEALS AND THE TEXAS COURT OF CRIMINAL APPEALS PERMITTED A LOWER COURT BEING SANCTIONED TO ALLOW THE PROCESS GUARANTEED ALL CITIZENS ITS INTERPRETED BY PRECEDENT AND GUARANTEED BY U.S. CONST. AMEND V, XIV, TO BE DENIED PETITIONER ALLOWING PRISON RULES FOR CALCULATING SENTENCES AND CUSTODY CREDIT, —

Simply Put, (1) PETITIONER WAS SENTENCED TO 10 YEARS IN TRIAL #1; (2) PETITIONER BY THE TIME TRIAL #2 STARTED HAD SERVED 4 YEARS IN ACTUAL PRE-TRIAL #1 CUSTODY AND PRE-TRIAL ACTUAL CUSTODY ON INDICTMENT #2; (3) BY BEING SENTENCED TO 10 YEARS PETITIONER LOST ALL PRE-TRIAL CUSTODY CREDIT, INCLUDING GOOD CONDUCT CREDIT; (4) JUDGE WATSON ORDERED PRE-TRIAL CUSTODY CREDIT ONLY FOR THE NEW INDICTMENT TO BE CREDITED TOWARD THAT CONVICTION ONLY; (5) THE CONDUCT ALLEGED AND UNDERLYING THE CONVICTION IN TRIAL #2 WAS THE SAME IDENTICAL CONDUCT AS THAT ALLEGED IN TRIAL #1; (6) TEXAS PRISONS WHEN FACED WITH TWO JUDGMENTS ROUTINELY COUNT CUSTODY

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CREDIT ON THE LONGEST SENTENCE
AND CREDIT TIME SERVED CREDIT
ONLY ON THE LONGEST SENTENCE;
(7) BECAUSE PETITIONER'S PRIOR
CUSTODY AND GOOD TIME CREDITS
ARE CREDITED ONLY TO THE 40
YEAR SENTENCE PETITIONER
IS CONSTRUCTIVELY DENIED DUE
PROCESS BECAUSE HE IS DENIED
CREDIT TOWARD THE SENTENCE THAT
WAS OBTAINED BY VINDICTIVE PROSECUTION
IT IS HARD TO IMAGINE THAT
ELECTED DISTRICT ATTORNEY WAS NOT
AWARE OF THIS EMPLOYER EVENTUALITY
WHAT IS KNOWN IS THAT THE COURT OF
CRIMINAL APPEALS WAS INTERESTED
IN THE ISSUE ENOUGH TO REMAND
THE HABEAS PROCEEDINGS FOR FURTHER
DEVELOPMENT OF THE ISSUE BY
REQUIRING THAT ELECTED D.A. TO
ANSWER. THE ANSWER WAS ESSENTIAL
"WHOME?", BUT CREDIT TOWARD
COMPLETION OF THE SENTENCE ON
SENTENCE #2 WAS REJECTED. HE KNEW
AND THE ANSWER TO "WHOME?" IS
"YES, YOU!" PETITIONER CANNOT HAVE
CREDIT TOWARD "GETTING OUT OF PRISON"
BECAUSE OF THE OPERATION OF HOW THE

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CALCULATES HOW SENTENCES ARE SERVED EVEN THOUGH THE TWO SENTENCES RUN CONCURRENTLY, NOT CONSECUTIVELY, PETITIONER IS DENIED DUE PROCESS OF LAW, VIOLATIVE OF THE GUARANTEE OF DUE PROCESS IN U.S. CONST.

AMEND. V, INCORPORATED TO THE STATE OF TEXAS VIA U.S. CONST AMEND. XIV, SIMPLY PERALISE TIME HE HAS SPENT IN ACTUAL DETENTION, AND GOOD CONDUCT CREDITS FOR BEING A MODEL PRISONER WHILE INCARCERATED, ARE NOT CREDITED TOWARD GETTING OUT OF PRISON.

PRISONERS, SIMILARLY SITUATED, SUFFER THE SAME VIOLATION, GENERALLY. BUT SPECIFICALLY, THE RESULT WAS INTENDED BY DISTRICT ATTORNEY "RUB" CHRISTIAN, AND JUDGE WALTON'S JUDGMENT DENYING CREDIT TOWARD GETTING OUT OF PRISON, WAS SANCTIONED BY BOTH COURTS OF RECORD, THE COURT OF CRIMINAL APPEALS AND THE FIFTH CIRCUIT. PETITIONER IS RE-SERVING TIME BECAUSE A JUDGMENT RESULTING FROM VINDICTIVE PROSECUTION WAS SANCTIONED.

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CONCLUSION

THE CRIMINAL JUSTICE SYSTEM IN THIS COUNTRY IS IN SHAMBLES AND IT GOT TO ITS CURRENT STATE BECAUSE LOWER COURTS TREAT THE PRECEDENT OF THE SUPREME COURT AS DE MINIMIS, UNENFORCEABLE, SUBJECT TO DAILY EMASCULATION BY THE LIKES OF "LAWYER FOR THE WEEK" RUNNING CRIMINAL DEFENDANTS THROUGH THE SYSTEM LIKE PEZ THROUGH A PEZ DISPENSER, AND WITH ABJECT DISREGARD FOR THIS COURT AND ITS PRECEDENT. IN TEXAS IT IS NO WONDER VINDICTIVE PROSECUTIONS, THOUGH TEXTBOOK IN FACT BY THERE BEING TRIAL, CONVICTION, SENTENCE, PRISON, SUCCESSFUL APPEAL, SECOND TRIAL, HARSHER SENTENCE, NO COURT STEPPED IN TO SAY "NO", EVEN WHEN THE TIME SERVED (4 YEARS) WAS CONSTRUCTIVELY DENIED PETITIONER'S ACTUAL TIME SERVED TOWARD GOING HOME. LAWYERS CAN INTENTIONALLY NOT DO THEIR JOBS EFFECTIVELY SPITTING ON THE CONSTITUTION AND THIS COURT. COMPARE TO "LAWYER OF THE WEEK" WHY WOULD A MAN CHOOSE TO PUT HIS LIFE IN THAT MAN'S HANDS

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IS THERE ANY WONDER SO MANY PLEAS OF GUILTY FILL THE COURTS? IS THE LEGACY OF THIS JUSTICE SYSTEM TO BE LINES OF MEN AND WOMEN HAND CUFFED TO A CHAIN, NEXT TO SOME GUY THEY ONLY MET AN HOUR PREVIOUS WITH THAT HOUR NOT SPENT DOING ANYTHING AS A PROFESSIONAL FOR HIM, RATHER THAT HOUR WAS SPENT COERCING ANOTHER MAN TO PLEAD GUILTY.

BUT FINALLY, IS THE LEGACY OF THIS SYSTEM TO LIE IN THE STOP WATCH TREATMENT OF LOWER COURTS APPLYING THE AEDPA. WHEN WILL COURTS BE COMPELLED TO APPLY AEDPA IN A MANNER IT WAS INTENDED. INMATES HAVE NO RIGHT TO COUNSEL ON HABEAS CORPUS, SO WHEN WILL LOWER COURTS BE COMPELLED TO MEASURE BASED ON THE PARTICULAR CIRCUMSTANCES OF EACH CASE WHETHER PETITIONERS WERE TRYING TO "GET OVER" ON THE COURT OR HONESTLY COULD NOT ABIDE THE ONE YEAR LIMITATION ON FILING BUT WAS TRYING AT ALL TIMES. WHEN WILL REVIEW NOT BE TIED TO A STOPWATCH IN CONTRAST TO THIS COURT'S PRECEDENT?

ANSWERS ARE SIMPLE. PROVE THAT

-B-M-

THE ANSWERS COME FROM AN INNOCENT MAN, CONVICTED OF SEXUAL ABUSING A CHILD, THOUGH THE CHILD WAITED FROM JUNE, 2002 TO OCTOBER, 2002 TO OUTCRY, AND JUSTICES OF THE 2ND COURT OF APPEALS OF TEXAS felt she was "coached" in her outcry, AND FORENSIC EVIDENCE DID NOT CORROBORATE HER OUTCRY, RATHER HAD THE EXACT OPPOSITE EFFECT THOUGH COUNSEL DID NOT PRODUCE THAT EVIDENCE AT TRIAL, SENTENCE TO 40 YEARS, SUCCESSFUL APPEAL, THAT RESULTED IN A VINDICTIVELY PROSECUTED 65 YEAR SENTENCE AND NO CREDIT FOR TIME ALREADY SERVED LOCKED UP SINCE 2002 AND DENIED REVIEW OF HIS NOW FRIVOLOUS ISSUES BECAUSE HE WAS TOO POOR TO FILE THE WRIT ON TIME, AND TOO SCARED TO GET INMATE "WRIT WRITER" ASSISTANCE BECAUSE CONVICTED "CHOMOS" ARE BEATEN IN PRISON, AND HIS SENTENCE WAS TO 2071. INNOCENT, POOR, THREAT OF EXPOSURE TO REGULAR BEATINGS, INCARCERATED ALMOST 20 YEARS AND AT LEAST 20 TO GO, AND HE HAS THE FAMILY SIGNED HE WOULD NOT HAVE BUT FOR CHERYL COLE'S

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AND OTHER FAMILY MEMBERS' PERSONAL WITNESS TO THE ABUSES OF DEFENSE COUNSEL, PROSECUTOR, JUDGE AND A SYSTEM OF REVIEW SANCTIONING THE ABUSES.

ALL OF THIS IS REPORTED TO ONE FINAL ARBITER - EVEN THE LAWYER PETITIONER WAITED NINE YEARS TO RETURN, IN AN ELEVENTH HOUR COUP DE GRAS, FINAL JUDGMENT, AS PETITIONER FOUGHT FOR HIS FREEDOM, REFUSED HIM HIS FILE SO HE COULD FILE WHAT THE LAWYER WOULD NOT... A LAST EFFORT THAT IS NO DOUBT SANCTIONED THOUGH DEVASTATING AS PETITIONER AND THOSE ASSISTING HIM MUST FILE TO THIS COURT WITHOUT REFERENCE TO JUDICIAL PROCEEDINGS PAST WHICH IS INDISPENSIBLE TO ANY LEGAL EFFORT CHALLENGING ILLEGAL CONFINEMENT.

WITH THIS EXPERIENCE, 20 YEARS INCARCERATED, 20 YEARS OF UNSUCCESSFUL PETITIONS FOR RELIEF BASED ON THIS COURT'S PRECEDENT, AND THERE IS BUT ONE MESSAGE TO RELAY: LOWER COURTS HAVE ENOUGH RESPECT FOR SUPREME COURT PRECEDENT AS VIOLENT MEN HAVE FOR "CHOMES

GIVEN THE CIRCUMSTANCES, PETITIONER PRAYS THIS COURT EXERCISE ITS SUPERVISORY POWERS BECAUSE IT IS YOUR PRECEDENT LOWER COURTS ARE DISRESPECTING AND INTERMEDIATE APPELLATE COURTS AND STATE OF TEXAS HIGHEST COURT IS DENYING NOTHING BUT JOINING IN TO THE DISRESPECT. WHO ELSE, BUT YOU? OPEN YOUR EYES TO WHAT IS GOING ON...

"GARDEN'S TRUMPET" WAS DECIDED BY YOU IN 1963. DEFENDANTS CHARGED WITH CRIME HAD A RIGHT TO COUNSEL. NEARLY 60 YEARS LATER INMATES HAVE THE RIGHT TO COUNSEL, A CORNERSTONE OF THIS SYSTEM, BUT THEY ARE MET IN THE HOLDOVER CELL NEXT TO THE COURT, BY "LAWYER OF THE WEEK"! THAT WAS NEVER INTENDED IN 1963, OR 1984 OR TODAY.

THIS COURT MUST EXERCISE ITS SUPERVISORY POWERS AND END THIS MESS. WHO ELSE, BUT YOU?

Respectfully submitted
JERRY EMM WHITE
(w/permission)

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75048

Jason Earl White
w/ permission

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
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NEW ORLEANS, LA 70130

October 26, 2021

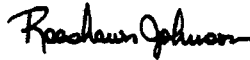
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-11100 White v. Lumpkin
USDC No. 4:20-CV-628

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Roeshawn Johnson, Deputy Clerk
504-310-7998

Ms. Karen S. Mitchell
Mr. Jason Earl White
Ms. Jennifer Wissinger

United States Court of Appeals
for the Fifth Circuit

No. 20-11100

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2021

Lyle W. Cayce
Clerk

JASON EARL WHITE,

Petitioner—Appellant,

versus

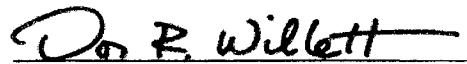
BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,*
Correctional Institutions Division,

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 4:20-CV-628

ORDER:

IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED.



DON R. WILLETT
United States Circuit Judge