In the Supreme Court for the United States

Dwayne Stoutamire,

Case no. 21-3810

v.

Warden TimShoop,

Motion for Reconsideration

Dwayne Stoutamire# 532253

C.C.I.

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Memorandum in Support

I come before this Honorable Court asking that it reconsider its decision to not review my issues that I presented before the court. More particularly, the issue concerning the miscarriage of justice standard when considering constitutional claims that were found to be procedurally defaulted but are in fact proper before the courts. I ask the court to except review of this issue so the court can make it possible for people who has properly presented their constitutional claims to the state courts, but inadvertently loss those claims due to the mistakes found by the district court.

My issue stemmed from the fact that I presented the constitutional claims of Ineffective assistance of trial counsel and Prosecutorial Misconduct (Brady violation), before the United States District Court for the Northern District of Ohio. The district court found that I procedurally defaulted these claims even though the state and myself admitted that atleast my Brady claim was properly presented before the state courts. I have argued before the lower courts that I properly presented these claims to the state courts and that the state courts reviewed these claims on the merits, to no avail. The lower courts realized that they did make a error in its procedural default finding during the Certificate of Appealability stage but declined to fix this error due to the timing of the discovery of this error. So I come before this court asking that it except review of my petition so a miscarriage of justice does not transpire and so my constitutional claims could receive the proper consideration that it is due.

I ask the court, has the constitution lost its muster, has the age of procedural defaults dominate the stage of justice. I ask the court to look at the record and see that I did all that was

required of me so I may obtain review of my constitutional claims that were violated by the Ohio state court. This court has stated that the procedural defaults and finality cannot interfere with the correction of a miscarriage of justice.

This court has stated that the procedural default rule is a judge made rule. I fail to see how a judge made rule has precedence over the constitution. Habeas corpus is a review a review in equitable consideration.

"Habeas corpus is, at its core, an equitable remedy." **Schlup v. Delo, 513 U.S. 298, 319 (1995)**

As this court's power is also equitable in nature, as well as the nature of the miscarriage of justice standard, what I will suggest should seem plausible.

"this rule, or fundamental miscarriage of justice exception, is grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors does not result in the incarceration of innocent persons." **McQuiggin v. Perkins, 569 U.S. 383, 392 (2013)**

I am a innocent person who is merely asking that my constitutional claims be heard on its merits. I have done all that was required of me. I have avoided all the landmines and pitfalls in order to make it to the federal courts, only to be disregarded by the same courts who is here to make sure the state courts do not violate my constitutional rights. I find it ironic that the judge made rule of procedural default can be so easily used to ignore a constitutional right. What more is troubling is the fact that if I "did" commit a procedural default my claims would

be forever out of reach of review, but if the federal courts makes this error it is unwilling to correct its own errors of its judge made rule. I am in a catch 22.

I ask the court to except review of this issue so it can find a means to correct such situations in the future, so innocent people of this state do not lose their constitutional rights due to the district courts and court of appeals finding of procedural default, when it is found to not even apply to the claims. There is no real remedy from the court to correct this miscarriage of justice.

I am asking is for the court to extend its protections to situations as this. that the court makes a exception to the miscarriage of justice rule as it did when it brought to life the cause and prejudice standard and actual innocence standard.

I come asking that the court take review of my writ so you may review and determine a limited means for petitioners as myself to be able to have their constitutional claims heard, especially when they did all that was required of them.

Numerous of times this court has stated that constitutional claims should be heard on their merits, that the ends of justice warrant it.

"conventional notions of finality in criminal litigation cannot be permitted to defeat the manifest federal policy that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review." **Fay v. Noia, 372 U.S. 391, 424 (1963)**

"where a petitioner would, but for a judge-made doctrine like procedural default, have a good habeas claim, it offends no command of congress's for a federal court to consider the petition." **McQuiggin v.Perkins, 569 U.S. 383, 403**

This court has shown that even after a claim has been heard and the claim could be considered a second and successive petition, the ends of justice can overcome any red tape.

"even if the same ground was rejected on the merits on a prior application, it is open to the application to show that the ends of justice would be served by permitting the redetermination of the ground." **Sanders v. United States, 373 U.S. 1, 16 (1963)**

"Sanders established that federal court must reach the merits of an abusive petition if "the ends of justice" demand it." **McCleskey v. Zant, 499 U.S. 467, 485 (1991)**

"this court held that a habeas court ***must*** adjudicate even a successive habeas claim when required to do so by the ends of justice." **Schlup v. Delo, 513 U.S. 298, 319 (1995)**

"in appropriate cases, the principles of comity and finality... must yield to the imperative of correcting a fundament unjust incarceration." **Id. at page 320**

As this court has stated, the miscarriage of justice found its roots from the ends of justice standard.

As the statue states at 28 U.S.C.S. 2243, the court must... "dispose of the matter as law and justice requires." The procedural default rule that is being improperly applied to my claims are only judge made rules, they are not true statute law only rules fashioned by the court. Has this court become more powerful than the constitution?

Another I ask the Court to consider when considering this motion is the Court of Appeals application of the Actual innocence standard. The Court of Appeals has applied the law of the

case doctrine to the evidence that I submitted before the court. I state to the court that I have submitted other arguments of actual innocence before this court but every time I have submitted different evidence, more evidence than the previous time. When I presented my evidence to the courts, the court of appeals declined to consider all the evidence that I presented before them because I presented them in a prior argument of actual innocence. The court of appeals refused to consider the old evidence due to the law of the case doctrine, finding that because I presented these piece of evidence before it cannot be considered now. The court of appeals failed to consider this courts instructions in, **House v. Bell, 547 U.S. 518 (2006)**, where this court stated that the court reviewing a actual innocence argument must consider all the evidence, old and new, and make their decision based on the whole record.

"our review in this case addresses the merits of the schlup inquiry, based on a fully developed record, and with respect to that inquiry Schlup makes plain that the habeas court must consider "all the evidence", ***old and new***..." **House v. Bell, supra, 547 U.S. at page 537-538**

"....in evaluating a claim of actual innocence as a substantive basis for habeas relief, habeas court's do not blind themselves to evidence of actual innocence presented in prior habeas applications. When confronted with actual-innocence claims asserted as a procedural gateway to reach underlying grounds for relief, habeas courts consider ***all available evidence*** of innocence.... That includes evidence offered in... prior applications." **Reed v. Texas, 140 S.Ct. 686, 689 (2020)**

I ask the court how is this even possible, I am baffled how the lower courts are so willing to not consider other evidence of innocence due to another judge made rule of law of the case doctrine. Considering the fact that not only is this evidence that was not presented at trial so

hard to come by, this evidence shows a person's innocence and the court is unwilling to hear it due to the law of the case doctrine. Why must a petitioner lose relevant evidence that has some merit. Though the evidence could not meet the high standard of actual innocence alone, if considered with new and reliable evidence with it, it may now meet muster. The court of appeaps failed to recognize that when the petitioner presented the evidence in a prior argument of actual innocence that evidence may not been enough to fill the glass, but with the additional evidence presented in the current presented evidence it will overflow. So I ask the court to except review of this issue so it may tell the lower courts, that it requires for consideration of the evidence presented before the court, that all the evidence as a collective my advance the petitioner's argument of innocence.

"certiorari jurisdiction exists to clarify the law." **City and County of San Francisco v. Sheehan, 135 S.Ct. 1765, 1774)(2015)**

So I ask the court to except review of this issue and instruct the court that the law of the case doctrine does not have any place in the consideration of actual innocence, and instead, it is "based on the total record," **House v. Bell, supra, 547 U.S. at page 538.**

I also wish the court to except review of my writ because I wish the court to review the burden that is needed to meet the miscarriage of justice (actual innocence) standard.

The court has stated that the miscarriage justice is a rule that can be modified for situations such as this.

"such exceptions to procedural default are judge made rules that we may modify only when necessary." **Shinn v. Ramirez, 212 L. Ed 2d 713, 735 (2022)**

"and what courts have created, courts can modify." **McQuiggins v. Perkins, 569 U.S. 383, 403 (2013)** (Justice Scalia, with the chief Justice and Justice Thomas join and whom Justice Alito joins in parts I, II, III, dissenting)

"there is nothing inherently inappropriate (as opposed to merely unwise) about judge-created exceptions to judge-made barriers to relief." **Id.**

I ask the court to expect review of this issue so the court can make a less demanding standard of review. This court has clearly stated that …."the schlup standard is demanding." **House v. Bell, supra 547 U.S. at page 538**. I can understand the standard being so demanding when the petitioner failed to presented his claim before the state court. My thing is why should the standard be so demanding when the petitioner did nothing wrong. In fact, the only reason the petitioner is even is the situation is due to the Courts own application of the procedural default rule. How can the court penalize the petitioner for their own fault? So I ask the court to expect review so the court can fashion out a burden of review for people who should have had their constitutional claims heard in the first instance.

Conclusion

I believe in this court that it will not overlook the clear improper application of the procedural default rule and not allow one of its citizen's constitutional claims to be violated due to a judge made rule. That the court will allow the constitution to control the law and not the

law to control the constitution. If this court allows such flagrant errors to persist the constitution will only be heard when the courts want it to be heard, and citizens will continue to loss their constitutional rights to a police state rather than to a country of the people. This error did not happen before the state court, but the federal courts. The federal courts can fashion rules before their own courts so as to avoid such errors and allow constitutional claims to be heard. I properly presented my constitutional claims before the state courts, all I am asking for, is for me to be able to have my claims heard before this court. The federal courts should be able to correct their own errors so my constitutional claims can be heard on their merits.

After I shown the courts that I properly presented my claims to the state court (not one court, not even the state now contest that I presented my claims before the state court) I am having problems by the court who found this claim procedural defaulted, to correct its error. I guess the constitution holds less value than the court admitting its mistake.

I ask, has the constitution lost its meaning and purpose, has it only become a fragment of its worth, a "con" that is a illusion, a mirage that is just out of reach. Has justice become so distant, cold and disconnected to the constitution that she has forgotten what fairness really is, what the meaning of "miscarriage of justice" is? The meaning of Miscarriage of Justice, as it states in the Black Law dictionary:

"a grossly unfair outcome in a judicial proceeding." **Black law dictionary at page 1195 (11th edition)**

What is happening to me is the clear meaning of this phrase, miscarriage of justice. In the proceedings before the federal courts (because the state court reviewed my constitutional

claims) it has made the error, finding that I procedurally defaulted my constitutional claims in the state courts, but seeing that this finding was made in error chooses to turn a blind eye and not correct this error. Surely this is the meaning of miscarriage of justice, and if it is not than I do not know what the phrase means.

This court stated that the government, is for the people.

"ours is a government of the people, by the people, for the people." **U.S. Term Limits, inc. v. Thornton, 115 S.Ct. 1842, 1863-1864 (1995)**

Yet it seems that the weight of law leans in favor of the state and no justice for the people as myself. My rights are being ignored, openly and without any sympathy from the court.

This court has stated the loss of a petitioner's first habeas corpus a serious issue.

"Dismissal of a first habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the great writ entirely, risking injury to an important interest in human liberty." **Lonchar v. Thomas, 116 S.Ct. 1293, 1299 (1990)**

"to hold otherwise would mean that a dismissal of a first habeas petition for technical procedural reasons would bar the prisoner from ever obtaining federal habeas review." **Martinez v. Villareal, 523 U.S. 637, 644-645 (1998)**

So I ask the court to except review of this issue of miscarriage of justice and how it is being applied to people, where it has been found that they procedural defaulted their claims but the record comes to show that they did not in fact procedural default their claim. I am a

innocent man who is only asking that he has a fair opportunity before the court to have my constitutional claims heard.

"nothing we do as judge's in criminal cases is more important than assuring that the innocent go free." **United States v. De Ortiz, 883 f.2d 515, 524 (7th cir. 1989)**

"indeed, concern about the injustice that results from the conviction of an innocent person has been the court of our criminal justice system." **Schlup v. Delo, supra, 513 U.S. at page 325**

"society views the conviction of an innocent person as perhaps the most grievous mistake our judicial system can commit." **Satterfield v. Da. Phila, 872 f.3d 152, 154 (3rd cir. 2017)**

I ask the court to listen to Justice Blackman when it consider this procedural issue.

" the court would do well to heed Justice Black's admonition: it is never too late for courts in habeas corpus proceedings to look straight through procedural screens in order to prevent forfeiture of life or liberty in flagrant defiance of the constitution." **Sawyer v. Whitney, 505 U.S. 333, 357 (1992)**

Please "provide adequate protections to victims of a fundamental miscarriage of justice," **Schlup v. Delo, 513 U.S. at page 320**, to me and anyone who that may come after me with such a issue.

"Courts nevertheless must not shrink from their obligation to enforce the constitutional rights of all persons." **Brown v. Plata, 563 U.S. 493, 511 (2011)**

"Respectfully submitted,"

Dwayne Stoutamire