

OCT 26 2022

OFFICE OF THE CLERK

NO. 22-5284

IN THE
Supreme Court OF THE UNITED STATES
WASHINGTON D.C.

Michael D. Fagans : Petitioner

VS.

Bobba Lumpkin : Respondent(s)

Motion for Rehearing

To The Honorable Supreme Court Said;

Come now, Petitioner, Michael D. Fagans, Pro Se, pursuing a motion for Rehearing, under Rule 44 of This High Court to show The following;

Jurisdiction

This Court has Jurisdiction over The parties and The subject of The matter. Where on Oct. 11, 2022 a denial of The case NO. 22-5284. Petitioner, M. D. Fagans seek a "Rehearing" In Good faith and not for delay.

Certification

Come now M.D. Fagans as in accordance to Rule 44 and in Good Faith and not for delay to show The Courts the following;

These claims presented to the court concerns Michael D. Fagans, Actual Innocence not free-standing but by a fairly presented claim in Schlup standard in 2 (Two) ways. (1) 28 U.S.C. § 2254 (b)(2)(B)(i) due diligence. (2) 28 U.S.C. § 2254 (b)(2)(B)(ii) establishing by clear and convincing evidence. Considering the judgment ruled on by the Court of Appeal 5th Circuit and the District Court of Texas adopted each other manifest error of law. when in the writ of Certiorari, in the Index to Appendix p VII, Appendix B, Criminal appeal of Austin, Tex Judgment enter 5-18-2019 post-card denial, without written order, See Luna, 306 F.3d 954, The Supreme Court in this case "we have nothing to which we can defer." Petitioner Fagans suggest a De novo, concerning a External impediment, compelling element of Appendix A, p. USCA 5415, District County Court tainted Appendix B proceeding, prejudicing petitioner of 5th, 6th and 14th Guaranteed see (Exhibit 9) verbatim statement: "Fagans need **NOT** be brought back to Gregg County for a hearing," Presumed Prejudice.

I don't wish to attempt to relitigate the claims but demonstrate a Supreme Court, a sufficient showing under Murray v. Carrier 106 S.Ct at 2646 in this instant rehearing, supported by the Index to Appendix, Appendix-E "ALL Document(s)" from writ of Certiorari. Petitioner ask this High Court to conduct a De novo a review of the judgment in these courts to see if they are in compliance with Supreme Court decision in Faretta v. California, 422 U.S. 808. (1975) Rodriguez v. Johnson 104 F.3d. 699 (5th Cir. 1997). McGarry v. Scott, 27 F.3d. 181 (5th Cir. 1994) citing Sanders v. U.S. 373 U.S. 183 (1963). Supreme Court Precedence lie upon petitioner, sufficient showing where he was stripped of his 5th, 6th and 14th Amendment place under Affirmative Due Diligence from 5-14-2018 through 5-18-2018 without substantive safeguard but "Shadow Council Only, see p. USCA. 572. U.S. v. Taylor, 933 F.2d 307 (5th Cir. 1991). De novo should be considered.

Ground of Issue

1. NO Counsel

Did The United States Court of Appeals 5th Circuit and The United States District Courts of Tex. abused its discretion, where M.D. Fagans was without Counsel in the entire proceeding that violated his 5th, 6th and 14th Amendment That Guaranteed see p. USCA 572 in The Production of Records, attached in Appendix-E, in Writ of Certiorari, "All Documents"; MURRY 106 S.Ct at 2646 Sufficient Showing. See.

p. USCA 572; States Verbatim (Foretta Hearing, 5.14.2018); Hearing on motion To withdraw. Testimony heard. Court Allowed Defendant to Represent him- self for Trial. Court Appointed Craig Bass As Shadow Counsel Only.
Signed: David Brabham, Judge. NO Valid waiver 5.14.2018...

Cite:

State v. Davis 269 F.3d 514: States The Assistance of Stand by Counsel, no matter how useful To The Court or The defendant Cannot qualify as The Assistance of Counsel, required by The 6th Amendment. See Certification p. 2 of This document. U.S. v. Taylor; Same- Stand by don't qualify. Support by attached document (Exhibit 7); a reversible error.

Contention:

This High Court has a duty under Their Presedence have long required a accused must (1) Assert, waive, voluntarily, intelligently, desire and elect to do so, "with eyes open wide", and The Judge must consider various Factor; age, Education "Exhibit 1", of This document, Experience and Conduct. Foretta v. California, 422 U.S. 808, states (p. 2541) The defendant and **Not** his Lawyer or The State will bear The personal Consequence of The Conviction. Exhibit 10 is Contrary To Federal Law, Presumed PreJudice.

PreJudice:

Exhibit 10 (p. USCA 5580) State: motion to withdraw "I filed" in regards To the above-reference matter. The Supreme Court in Powell v. Alabama, 287 U.S. 45 (1932) This mandate was expanded in Gideon v. Wainwright 372 U.S. 339, "Ex. 10", is Contrary To Federal Law and state Const. 1-10 a fact, This High Court see a (colosable) Claim, sufficient showing, were Petitioner 5th, 6th and 14th Amendment infringed upon.

Continue of page 3

Constructive denial of Counsel is a reversible error automatically. Under 28 U.S.C. § 2244(b)(2)(B)(i)(ii) and 28 U.S.C. 2254(d)(1-2) Petitioner Fagans was placed under Affirmative due diligence at several critical criminal proceedings. "Shadow Counsel only" see USCA 572, establishing clear and convincing evidence, and State Pre Trial District Court violated Federal Law page (3) indicate and show, If juror of reason would more than likely not found petitioner guilty but encourage possible vacate, If these Exhibit were produce in The Records in Their Actual Writing, fine Print;

See:

page (3) State V. Davis, same page (3) U.S. V. Taylor and page (2) Jon David wheathered V. State of Texas, 833 S.W. 2d 341. State failed to provide Actual Exhibit, reversible error...

PreJudice:

Suppressed, Exhibit and legal document, See (1) p. USCA 572 "Shadow Counsel only, (2) Exhibit 7 attached document. Stand by Counsel, (3) Exhibit 10 attach document Appoint Counsel Craig Bass admitts "he filed" Contrary to farreta and Federal Law 6th Amendment violation, Guaranteed, abandon his client and Exhibit, Document;

(4) Case 6:19-cv-00279-SDK-JOL Document 36-2 * Sealed * Filed 02/08/21 page 7 of 8 page ID #: 549

Point:

This High Court see a Sufficient Showing That These 1-4 document were Excluded, suppressed, withheld from The records by External impediment By page Exhibit 9 under Certification, verbatim statement, "Fagans need NOT be brought back to Gregg County for a hearing", Presumed PreJudice...

emphasis;

P. USCA 5246; Reporting A misconduct (Judicial misconduct) Application NO. WR-88, 964-02 Denied without written order 5.08.2019. Surer of would debate to encourage Petitioner, possible vacate 5th 6th and 14th Amendment Guaranteed, has been infringed upon...

2. Brady Claim A, B, and C...

Petition will provide inextricable statements and newly available or discovered evidence under Brady at 373 U.S. 87 where evidence and material ~~was~~ favorable and withheld by external impediment where state failed to disclose these material and testimony until involuntarily plea, faced under Affirmative due diligence. See in ~~Brady~~ The state has a obligation to produce any favorable evidence without the accused making a request. See Request; p USCA 5373, p. USCA 5371, 5374, and USCA 5205, withheld from the accused.

Cite:

Jon David Wheathered V. State of Tx, 833 S.W.2d 341: State failed to provide Actual Exhibit, "Reversible Error"...

(A) Federal Statements withheld and Favorable testimony and witness!
See:

- 1- Exhibit 2: You may be indicted federally. date March 1, 2017
- 2- (Exhibit, p. USCA 5362): Please provide any information or report from The Federal government, **FBI**, United States Attorneys office, etc., related to this matter. date 10.9.2017.
- 3- (Exhibit, p. USCA 5367) (same), p. USCA 5362, **FBI!** date 2.08.2018

Point:

From date ⁽¹⁾ 3.1.2017 to ⁽²⁾ 10.9.2017 is Eight months 8 days, and to ⁽³⁾ 2.08.2018 is almost one (1) year approximately without any investigation because Appointed Counsel kept stating The **F.B.I** got your case is why (1), (2) and (3) shows External impediment, Brady Claim and Gilelio, 405 U.S. 150 and McGuiggin, 569 U.S. 383. Violation 5th, 6th and 14th Amendment withheld evidence never Produced.

Prejudice:

- 4- Exhibit 8: United States of America's (Department of Justice's) Notice of Limited Removal. Date 6.18.18 Presumed Prejudice...
Petitioner was giving Notice of **F.B.I** and denied his 5th, 6th and 14th Amendment Guaranteed... denied statement, testimony and witness.

2. Brady Claim "B"

(B) Brady Claim "Police reports withheld": State suppress petitioner police Report Exhibit 2 February 23 2017 Monday during visit with Attorney. Monday Feb 23 2017, I ask Mr. Craig Bass if he could retrieve my studio equipment including I have 8 video "footage" camera 4 inside and 4 outside, he stated you have a Recording Business I said yes! I also stated these foot-age will prove I didn't do this Robbery I was there around 11:45 Am to about 4:30 pm. I went out to eat with my son, Zayden and Baby mother, Plachitt Nicole Jackson Exhibit 6" and Exhibit 2 and Exhibit 5; III". attached documents.

Cite:

U.S. v. Mallory, 709 F. Supp. 2d 451: The very purpose of Fed. R. Evid. 902(11) United States Supreme Court in 2000, conducted business activity without requiring the testimony of a witness.

See

writ of Certiorari Index to Appendix, VII. Appendix E Support: Exhibit 6 "All documents", (1) 17-1560, Case 2:14-cv-00214 Document:

005:15803648 Page: 9 Date Filed: 03/31/2021, Line 6 (Six)

Security Cameras: see Slutzker v. Johnson, 393 F.3d 373: Brady thus envisions two (2) requirements for overturning a verdict (1) Government actually suppressed, and (2) evidence was material.

Contention:

Petitioner M.D. Fabians was Arrested 1-28-2017, 11 (eleven) days before the bank Robbery occurred at 915 S. Eastman Rd Longview Tx. These Camera Footage Proved Petitioner didn't have these Gun Seized at the Petitioner Club, Same, (1) 17-1560. under See, on this page (67).

Exhibit "17-1560", Case 6:19-cv-00279-JDK-JDL Document 36-2 *Sealed* Filed 02-08-21 Page 3 of 8 Page ID# 545 3rd Party 6'2 220lbs 22 of age!

Exhibit 17-1560 Case 6:19-cv-00279-JDK-JDL Document 36-2 *Sealed* Filed 02-08-21 Page 2 of 8 Page ID# 544, Fabians, 6'01, 161lb, 39 of age. Jurist of Reason would debate to encourage proceed to vacate if evidence Police Report was disclose, may 106 S.Ct at 2646.

3. Brady Claim C.

(C) 3rd Party Concealed, Petitioner Fagans arrested by Discrepancies...

Petitioner Fagans would like to demonstrate sufficient showing of documents not produced by request in their Actual Exhibit that concealed his innocence where if provided, error of reason would debate to adequate encourage to proceed, possible vacate, reversible of sentence;

Cite:

San David wheathered v. State of Tx 833 S.W.2d 341. Actual Exhibit: State Court fail to provide Actual Exhibit upon request, when the video and audio is contrary to or conflicts with production of records violates 5th, 6th and 14th Amendment. Reversible Error, "Production of Records is Edited..."

Point:

- (1) USCA 5261-Line 17, Is A 3 Party, (2) USCA 5263-Line 4-American Dream Inn, (3) USCA 5284-Line 15-is 3 Party, (4) USCA 5285-Line 17-American Dream Inn, (5) USCA 5115-Line 15-is 3 Party, (6) ~~USCA~~ 5116-Line 17-American Dream Inn.

Petitioner Fagans Request These document be in "plain writing", "on paper" and statement before trial, Brady 373 U.S. at 83, 87.

Prejudice:

- Requested Documents: (1) USCA 5373 "on Paper" (2) USCA 5371 "Bank Teller" statements, (3) USCA 5205 (Bank Teller) statement, report in writing, (4) Left Blank....

See:

Exhibit 4 attached, "Affidavit", by Petitioner under III. Bank Teller state on Video & Audio, Sure and Positive concerning Fagans description.

Exhibit 5 attached, "Affidavit", by Petitioner under III. All 3 Three Bank Teller stated Sure and Positive concerning description, August 23, 2017 of Petitioner Fagans.

Emphasis:

Petitioner has provided Trust worthy Eye witness account, including there is NO Warrant, NO Evidence, NO Phone Record, NO Witness, So Finger-Print Evidence was False, Fabricated by Accomplice multiple ly's when F.B.I. investigator stated; USCA 5519 "Discrepancies" in 5 five different statement. Giglio, 405 U.S. 150, Let ly's go uncorrect Prejudice Petitioner 5th, 6th and 14th Amendment, only if These document where developed...

3 Speedy Trial Act

Petitioner m. Fagans will Provide This High Court with Precedence Concerning a "Presumptively PreJudicial" Delay under The Barker Balance Test, where Delays cause PreJudice, Toward The Attendance of Alibi witness, material witness and character witness, Washington V. St. of Texas, 388 U.S. 14, "The right to offer testimony of witness and to compel their attendance is Fundamental element of due Process, 5th, and 6th Amendment as well."

See:

The Barker Balancing Test: The four (4) Factors That The Court Assesses:

- (1) whether The Length of The delay was uncommonly long;
- (2) whether The reason for The Delay was Justified;
- (3) whether The Accused Asserted his right; and
- (4) whether The Delay result in PreJudice To The Accused.

Contention:

Exhibit 2, Attached (March 1, 2017) Nicole Jackson; Alibi witness, witness for The Arrest on 2-21-2017, They Took Cell phone and Drugs and She's character witness this letter shows her Contact with Attorney.

Exhibit 3, Attached (Sep. 8, 2017) Assert, "Rule (3)" Affidavit

Exhibit 4-5, Attached, (Aug. 23, 2017) Demanding a Evidentiary Hearing.

Exhibit 6, Attached, (Feb. 25, 2018) PreJudice ~~Death~~ of Alibi witness ~~After~~ Petitioner Begged for A Speedy Trial.

PreJudice:

Exhibit 3 Attached, #2. States: On five or six Occasion I've Told my Court appointed Atty to file The motion for Fast n- Speedy Trial That my witness memories are Fading, some moving away and some passing away and this PreJudice my Defense.

Exhibit 9 attached, "External Impediment", Compelling Element To Taint proceeding unfair Trial, Presumed PreJudice, Murray, 106 S.Ct at 2646; A Sufficient Showing, This High Court Suggested.

emphasis:

Motion Expanding The Record Rule 7 Rule 1-12 USA 5476-77, PreJudice by

Exhibit 9 Tainted, Threat, malicious intent. Presume PreJudice.

Argument and Authorities

Standard of Review

The United States Court of Appeals, Fifth Circuit in *Rodriguez V. Johnson*, 164 F.3d, 694 (5th Cir. 1997) has held a district court's discretion to dismiss a federal habeas petition. The Court will reverse such dismissal only if the Court find an abuse of that discretion. *McGory V. Scott* 27 F.3d 181, 183 (5th Cir. 1994), Citing, *Sandres V. U.S.* 373 U.S. 183 S.Ct. 1068, 1078-79, 10 L.Ed 2d. 148. (1963) that states a district court abuse its discretion, when it dismiss a petition on an erroneous legal conclusion or clearly erroneous finding of fact. Id.

Also in *Faretta V. California*, 422 U.S. 808 45 L.Ed. 2d 562, 95 S.Ct 2525 (at p. 2527) (1975) The sixth and fourteenth Amendment of our Constitution guarantee that a person brought to trial in any State or Federal Court must be afforded the right to Assistance of Counsel before he can be validly convicted and punished by imprisonment. This clear Constitutional rule has emerged from a series of cases decided over the last 50 years. The Question before us now is whether a defendant in a state criminal trial has a Constitutional right to proceed without Counsel when he voluntarily and intelligently elect to do so. (12541) The defendant and not his lawyer or the State will bear the Personal Consequences of a Conviction.

See Exhibit 10 "attached and Exhibit 7

Contention:

p USCA 5230, NO Attorney, 11.07 46630 AH1, Date 1-27-20

p USCA 5410, Incompetent to Represent self, 11.07 46630 AH2

p USCA 5246 Reporting a misconduct (Judicial misconduct) date 5-8-19, "Tampering with 6th Ground NO Counsel".

Prejudice: Attached

Exhibit 9 "USCA 5415" Compelling element, External impediment to taint Petitioner Fagans proceeding Presumed Prejudice.

Conclusion

In The Instance Case, Petitioner Fagans asserts, The state Courts and Federal Court and Court of Appeals 5th Cir. abused it discretion, when These Courts dismissed Fagans ~~WFO~~ petition on Clearly erroneous finding of Fact where Fagans was without Counsel Through the entire proceeding that violated his 5th, 6th and 14th Amendment. (see Appendix's) A, B, C, D and E "All Document 1-36" and attached That compare To The Supporting Exhibit's for This Claim, in NO. - 22-5284.

Prayer

wherefor Petitioner Fagans pray that this Honorable High Court
Could Grant Relief as Vacate of Judgment and Sentence and
Conviction As a Miscarriage of Justice with respect of This Court.

Respectfully Submitted

Michael D. Fagans #2611624
Pro. Se.

Certificate of Service

I Michael D. Fagans Certify a True and Correct Copy of
The foregoing Motion for Rehearing, In Good Faith and
not for delay and of penalty of perjury of 28.U.S.C §
1746 and post Mail on The 6 day of March, 2023.

Sincerely

Michael D. Fagans