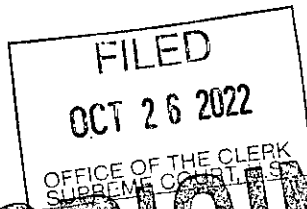


22-5952
No. _____



ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RANDALL JOSEPH REDMOND — PETITIONER
(Your Name)

vs.

BOBBY LUMPKIN — 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

RANDALL JOSEPH REDMOND
(Your Name)

LeBlanc Unit # 727110
(Address)

3695 FM 3514
(City, State, Zip Code)

Brownsville, TX. 77705
(Phone Number)

QUESTION(S) PRESENTED

- 1) Did the panel of the Fifth Circuit err by deciding that it lacked jurisdiction in case no. 22-50182 to justify the denial of a certificate of appealability in case no. 22-50098.
- 2) Has The Supreme Court of the United States overturned its own precedent in *Schlup v. Delo*, 513 U.S. 298 (1995). Where this Court decided that the district court should have assessed the probative force of the inmate's new evidence in connection with the evidence of guilt adduced at trial.
- 3) Does the Supreme Court decision in *United States v. Frady*, 456 U.S. 152 (1982), violate the equal protection of law, where it allows a different standard of review for state prisoners as compared to federal prisoners who are similarly situated.

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:

RELATED CASES

- *RE: IN Re Randell J. Redmond, No. 22-50112, Fifth Circuit Court of Appeals. Judgment entered May 12, 2022.*
- *Redmond v. Lumpkin, No. 22-50098, Fifth Circuit Court of Appeals. Judgment entered August 4, 2022.*

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*All other exhibits are attached to writ of
Mandamus in case no. 22-5384*

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Harbison v. Bell</i> , 556 U.S. ___, 173 L.Ed.2d 347 (2009)	p. 9
<i>Henderson v. Kibbe</i> , 97 S.Ct. 1730 (1977)	p. 14
<i>McDuggin v. Perkins</i> , 185 L.Ed.2d 1019 (2013)	p. 11
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995)	p. 11
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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-A 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 "C" to the petition and is

- ☐ reported at Appendix to Writ of Mandamus; 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 August 4, 2022.

☐ 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: September 6, 2022, and a copy of the order denying rehearing appears at Appendix B-D.

☐ 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

The questions presented implicate the following provisions of the Constitutions of the United States and the United States Code.

Amendment XIV: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. § 2253(C)(1)(B): "A prisoner - " Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from... the final order in a proceeding under Section 2255."

28 U.S.C. § 2254 (a): The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

There are a number of reasons why this honorable court should consider if this case involves also a petition for common-law writ of certiorari, jointly with the writ of mandamus filed on July 5, 2022, and placed on the docket August 18, 2022 as No. 22-5384. At that time, Mr. Redmond appealed both numbers assigned by the United States Court of Appeals for the Fifth Circuit: No. 22-50112 and No. 22-50098.

When the Fifth Circuit Court of Appeals refused to decide case no. 22-50098 by dismissing it as case no. 22-50112, Mr. Redmond filed a writ of mandamus in this honorable court to order the Appeals Court to decide the merits of his newly discovered evidence under Rule 60(b) of the Federal Rules of Civil Procedure and Rule 52(b) of the Federal Rules of Criminal Procedure.

It wasn't until after Mr. Redmond served the Fifth Circuit Court of Appeals, did United States Circuit Judge Oldham, who at first decided that the court lacked jurisdiction in case no. 22-50112 roughshodded over case no. 22-50098 to avoid assessing the probative force of Mr. Redmond's newly discovered evidence.

All of the documents supporting these claims are already attached to Mr. Redmond's writ of mandamus, including where the facts are located in the record.

The Fifth Circuit Court of Appeals decided not to file a response due September 19, 2022. The undisputable facts are insurmountable:

- 1) The first and most important constitutional violation was the denial of the right to present a defense at trial. Trial Court granted funds, that was never used, to have Mr. Redmond examined by an orthopedic surgeon because he has a disability known as Chronic Dislocations of the shoulders. As Mr. Redmond testified and the court was aware that his brother-in-law, Danny Armelin attacked him first. Fearful of the disadvantage Mr. Armelin had, Mr. Redmond pulled a weapon and shot Mr. Armelin, who died from his wound.

Trial Counsel, Mr. Thomas H. Morris, III, contacted twenty-one (21) orthopedic surgeons and all were willing to give favorable testimony. But they all needed more of a notice than the two weeks before trial to schedule an appointment to assess Mr. Redmond's disability and prepare for a trial date.

Trial Judge, Dwight E. Peschal, denied Mr. Redmond's requests for a continuation, per first and second motions. And he found himself convicted and within the fences of the Texas Department of Corrections less than four (4) months from the date of the incident.

2) Mr. Redmond had the same counsel on appeal as trial. Once he understood that counsel was ineffective at trial, he relieved Counsel of his duties in order to file an ineffective assistance of counsel claim. At this time, Mr. Redmond did not know that he could have requested new counsel. After filing multiple unsuccessful writs, he filed a motion for appointment of counsel in the Fifth Circuit raising a Martinez claim, but was cited for abuse of writ.

Mr. Redmond demonstrated diligence in an affidavit by writing many dozens of addresses found in abandoned newspapers. None answered the call.

3) Now that Mr. Redmond has filed a writ of mandamus in this Court, the Fifth Circuit has for the fourth time barred him from filing in any court in its jurisdiction. See attached order to writ of mandamus.

4) It wasn't until July of 2019, Mr. Redmond was able to get a qualified expert psychologist to make an assessment that it is possible for someone to react the way Mr. Redmond did. See Appendix "O" - writ of mandamus.

5) Mr. Redmond's writ of mandamus is indicative of citing versions of the record presented here. He filed a motion for authorization in the fifth

Circuit Court of Appeals to file a Rule 6D(b) motion in the district court. In violation of its own rule 32244 (a)(3)(a) a clerk of the court dismissed the motion instead of a three-panel judge.

- 6) Mr. Redmond had no other recourse but to file a Rule 6D(b) and 52(b) motion. He wrote to the court several times requesting forms, but was not provided them.

These things are mentioned to show the extent the lower courts go to hinder a prisoner's claims.

- 7) The district court Chief Judge Orlando L. Garcia dismissed Mr. Redmond's motions for lack of jurisdiction.

- 8) Mr. Redmond filed a motion for the district court to designate the record. The district court simply returned the motion back to Mr. Redmond unfiled.

- 9) Mr. Redmond filed a motion with the Fifth Circuit to designate, specifically his Rule 6D(b), rule 52(b), and all exhibits, as part of the record. The Fifth Circuit sent Mr. Redmond a letter, attached to writ of mandamus, stating that all of the record was forwarded to the Court and

and the motion was unnecessary.

- 10) The three-judge panel also cited lack of jurisdiction and went as far as to claim that no such motions as a Rule 60(b) and 52(b) were filed in the district court. See order in case no. 22-50112.
- 11) When the fifth Circuit Court of Appeals dismissed Mr. Redmond's claims, he filed a writ of mandamus, which is still pending, the same Circuit Judge, Oldham, issued a second order conflicting with the first order, he also ruled in, barring Mr. Redmond again from filing in any court in its jurisdiction.

REASONS FOR GRANTING THE PETITION

At every step of the process, as presented, Mr. Redmond was met with some kind of obstacle to prevent him from raising his actual innocence claim.

1. [Question One] Did the panel of the Fifth Circuit err by deciding that it lacked jurisdiction in case no. 22-50112 to justify the denial of a certificate of appealability in case no. 22-50098.

Mr. Redmond filed notice that he was appealing to the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, from the District Court's "Order" dismissing his Federal Rules of Civil Procedure. Rule 60(b) and Federal Rules of Criminal Procedure. Rule 52(b), and the denial of a COA.

The district court and Fifth Circuit are derelict in forcing unschooled prisoners into believing that they "must" file for a COA in a non-merits analysis case.

Mr. Redmond introduced the decision in *Harbison v. Bell*, 554 U.S. —, 173 L.Ed.2d 347 (2009) which states:

"COA requirement applies only to final orders that dispose of the merits of a habeas corpus proceeding... An appeal from the denial of a Rule 60 motion that attacks a (procedural ruling) that precluded a merits determination is not a final order circumstance, should not be required."

In his order issued by Circuit Judge Oldham, second paragraph, he acknowledges that Mr. Redmond appears to argue that his motion is not successive because he sought to challenge a defect in his federal habeas proceedings rather than his judgment of conviction...

Note: this was the second round, because the district court had already done the same thing the first time.

In a Rule 60(b) motion, the movant must show that he is entitled to relief from judgment because of (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misconduct, or misrepresentation of an adverse party; (4) that the judgment is void; ⁽⁵⁾ that the judgment has been satisfied; or (6) any other reason justifying the granting of relief from the judgment.

There's no lack of jurisdiction here as, both, the lower courts claim. Rule 60(b) empowers the federal courts to hear the petitioner's challenge.

Even though Mr. Redmond presents newly discovered evidence (#2), there is a catchall phrase (#6) to justify any reason to grant relief from judgment.

Mr. Redmond is rearguing the writ of mandamus here. The Supreme Court has recognized that "where a district court persistently and without reason refuses

to adjudicate a case properly before it, the Court of Appeals may issue the writ 'in order' that it may 'exercise the jurisdiction of review given by law.'
Will v. Calvert Fire Ins. Co., 98 S.Ct. 2552 (1978).

The reason why this honorable Court makes such a statement is because this is a practice that happens regardless of Supreme Court precedents.

Based on the newly discovered evidence, Mr. Redmond is actually innocent. See *McQuiggin v. Perkins*, 135 S.Ct. 1031 (2015). The emphasis on actual innocence held to be gateway through which state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar...

II. [Question Two] Has the Supreme Court of the United States overturned its own precedent in *Schlup v. Delo*, 513 U.S. 298 (1995). Where this Court decided that the district court should have assessed the probative force of the inmate's new evidence in connection with the evidence of guilt adduced at trial.

Mr. Redmond argues that the Supreme Court has given a loophole to the lower courts that allows them to keep from entering decisions in conflict with

precedent.

The Supreme Court set precedent in cases like *Schling v. Delo*, 130 L.Ed.2d 814 (1995), emphasizing that actual innocence allows the reviewing tribunal also to consider the probable force of relevant evidence that was either excluded or unavailable at trial; (the Court goes on to emphasize) the habeas corpus "must" make its determination concerning the petitioner's innocence in light of all the evidence, ... - but with due regard to any ... and evidence "claimed" to have been wrongfully excluded or to have become available only after trial. Habeas Corpus § 118, 120.

In order to avoid making conflicting decisions, the courts have resorted to avoid making decisions at all by using reasons to hinder the truth from being made a part of the records, as in the instant case.

III. [Question Three] Does the Supreme Court decision in *United States v. Frady*, 456 U.S. 152 (1982), violate the equal protection of law, where it allows a different standard of review for state prisoners as compared to federal prisoners who are similarly situated.

Mr. Redmond is a state prisoner. He argues as he does in his writ of mandamus, that his case is different from *Frady* because he, first, has new

widance. Frady did not. Mr. Redmond presents "cause and prejudice" in how he was denied the opportunity to present a defense at trial. Frady does not. Mr. Redmond made a request for a lesser-included-offense. See Writ of Mandamus. Then Mr. Redmond goes on to prove that his new evidence would have changed the outcome of the trial. The charge given to the jury refers to an ordinary person without disabilities and therefore eliminates facts and circumstances that applies to Mr. Redmond and directly to this case.

Instead of rearguing everything again, Mr. Redmond is hoping that this honorable court consider this petition for a writ of certiorari, jointly, with the writ of mandamus. In Mr. Redmond's writ of mandamus, he demonstrates that the way the Fifth Circuit decides its cases is in conflict with other circuits. See pg. 20. (writ of mandamus).

Page 13, Mr. Redmond argues his Rule 52(b) claim raising justification, excuse, and mitigating circumstances to warrant a manslaughter charge by presenting colorable evidence that the jury was not given an adequate opportunity to consider a manslaughter charge.

By denying Mr. Redmond the opportunity to present a defense at trial, the trial court's instruction

relieved the state, the burden of proving malice, an element of the crime of murder, beyond a reasonable doubt, thus demonstrating that the instruction given to the jury was also prejudicial that it will support a collateral attack on the constitutional validity of a state court's judgment even greater than the showing required to establish plain error. See *Henderson v. Kibbe*, 97 S.Ct. 1730 (1977).

This writ of certiorary restates, clarifies, and simplifies the procedure in the writ of mandamus. The law and controlling precedent indicates that Mr. Redmond was due to have his newly discovered evidence weighed against the guilty verdict to determine if he is actually innocent or guilty of a lesser crime. It is unfortunate that this court hears less than 1% of cases filed here. It's less for the extraordinary cases because they are just that; extraordinary. If the ordinary have a slim chance of being heard, what chance do we have - the disabled. Equal protection of the law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 25, 2022