

No. 4:20-cv-03198  
**22-6010**  
Capital Murder

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S. FILED JUN 28 2022 OFFICE OF THE CLERK
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Christopher L Penn — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court Southern District Houston  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher L Penn  
(Your Name)

9601 Spur 591 Amarillo Tex  
(Address)

Amarillo Tex 79107  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

QUESTION(S) PRESENTED

I feel I WAS railroaded and  
my question is

why my State Counsel failed  
to ASK for a mistrial when  
my verdict WAS changed from  
Not Guilty to Guilty

## **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**

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*I corrected the mistake below, thank you*

APPENDIX A Direct Appeal filed 9-16-14 CASE NO 14-13-00263-CR

TR. CT NO. 1345118

APPENDIX B P.D.R - Affirmed on 3-18-15 - CASE NO. PD-1574-14

APPENDIX C 11.07 writ of Habeas Corpus <sup>Denied</sup> 10-23-19 CASE NO. <sup>TR. CT NO 1345118</sup> 14-13-00263 CR

APPENDIX D 2254 Writ of Habeas Corpus <sup>10-13-20 Dismissed with prejudice</sup> CASE NO. <sup>4:20-CV-03198</sup>

APPENDIX E C.O.A 5<sup>th</sup> Circuit Denied 5-23-22 NO. 22-20117 <sup>Dismissed</sup>

No 1345118

APPENDIX F 185<sup>th</sup> District Court 3-22-13 Convicted

APPENDIX A 2254 Writ of Habeas Corpus <sup>10-13-20 Dismissed</sup> CASE NO. <sup>4:20-CV-03198</sup>

APPENDIX B C.O.A 5<sup>th</sup> Circuit Denied Dismissed 5-23-22 NO. 22-20117

APPENDIX C 11.07 Writ of Habeas Corpus Denied 10-23-19 CASE NO. <sup>TR. CT NO</sup> 1345118-A

APPENDIX D Direct Appeal filed 9-16-14  
14-13-00263-CR

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APPENDIX E P.D.R.

Affirmed on 3-18-15 CASE NO PD-1574-14 TR. CT NO. 1345118

# TABLE OF AUTHORITIES CITED

## CASES

## PAGE NUMBER

Mc Quiggen vs Perkins 133 S. Ct. 1924, 1931, (2013)  
 White vs State CR App. 1973 492 S.W. 2d 281  
 Criminal Law 889  
 Alston vs State (1874) 41 Tex 39  
 May vs State (1879) 6 Tex Crim 191  
 Jones vs State (1879) 7 Tex Crim. 103  
 Galae vs State (1880) 9 Tex Crim 259  
 Caviness vs State (CR. App. 1947 150 Tex Crim, 296 200 S.W.  
 2d 1017 Crim Law 889, 890  
 ex Parte Brooks. 219 S.W. 3d 396, 401 (Tex Crim) App. 2007  
 ex Parte Martinez 330 S.W. 3d Baliste v. State 888 S.W. 2d 9 (Tex Crim)  
 Stokes v. State 298 S.W. 3d 428 (Tex Crim App 2009) App 1994  
 STATUTES AND RULES

## 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 A to the petition and is

☒ reported at 10-13-20 <sup>Dismissed</sup> ~~4:20~~ <sup>4:20</sup> - CV-03198; 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 B to the petition and is

☒ reported at 5-23-22 <sup>Dismissed</sup> ~~5-23-22~~ <sup>2/6, 22-20117</sup>; 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 C to the petition and is

☒ reported at 10-23-19 <sup>TR. CT NO</sup> ~~10-23-19~~ <sup>Denied</sup> 1345118-A; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Illinois County <sup>NO 14-13-00263-CR</sup> ~~United States~~ <sup>185th</sup> Court court appears at Appendix D to the petition and is

☒ reported at 4-16-24; 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 ~~10-13-20~~ 5-23-22 ~~I cant provide this information due to property loss but it is on file in my 2254 writ.~~

☒ 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: MAY 4, 2022, and a copy of the order denying rehearing appears at Appendix ~~B~~ B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 9-1-22 (date) on 9-1-22 (date) in Application No. 2107A 1651.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

*Dismissed*

☒ For cases from state courts:

The date on which the highest state court decided my case was 10-13-20 ~~10-13-20~~.  
A copy of that decision appears at Appendix ~~A~~ A.

☒ A timely petition for rehearing was thereafter denied on the following date: 5-23-22 ~~10-13-20~~, and a copy of the order denying rehearing appears at Appendix ~~A~~ A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 7-19-22 (date) on 7-19-22 (date) in Application No. 2107A 1651.  
1257 A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

*Dismissed with prejudice*

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

It is not only within the power, but it is the duty, of the trial judge, to reject and informal or insufficient verdict, call the attention of the jury to the informality or insufficiency, and have it corrected with their consent, or send them out again to consider of their verdict. *Alston vs State* (1874) 41 Tex 39 *May vs State* 6 Tex Crim. 191. *Jones vs State* (1879) 7 Tex Crim. 103, (1879) *Cage vs State* (1880) 9 Tex Crim 259

*Perez vs State* / App 14 Dist 2000 ct 503d 628 crim law 880.1. TX JUR. 3d CRIMINAL LAW 4939 REVERSAL BASED ONLY ON ERRORS IN PUNISHMENT STAGE OF TRIAL.

*Reese vs State* App. 9 Dist. (1987) 725 S.W.2d 793 ~~773 S.W. 2d~~ 314 CRIMINAL LAW 889 890

## STATEMENT OF THE CASE

I Christopher Penn was found  
Not Guilty but Seconds later the  
Foreman says uh uh uh I'm  
Sorry Guilty. I truly believe  
my constitutional Rights were  
violated. I was convicted of  
Capitol murder and sentenced to  
life with out parole.  
There was no proper polling of Jurors

Thank you

## REASONS FOR GRANTING THE PETITION

I Christopher Penn believes my Petition should be granted when my Verdict was changed from Not Guilty to Guilty there was no proper polling of the Jurors, And I believe I should not have to stand against the A.E-D.P.A Statutory limitations I also presented in my 2254 writ of habeas corpus an Affidavit from States witness that MR Penn had nothing to do with this case. I truly believe this is a clear cut case of actual innocence

Case No. 1:21-cv-00001

Barth Christian v. Lumpkin, et al.

FILED

JUN 28 2022



### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher L Penn

Date: JUNE 28 - 2022

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

May 23, 2022

Lyle W. Cayce  
Clerk

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No. 22-20117

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CHRISTOPHER LAMONT PENN,

*Petitioner—Appellant,*

*versus*

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

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:20-CV-3198

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Before JONES, DUNCAN, AND ENGELHARDT, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

**RECEIVED**

**OCT 12 2022**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

In this habeas corpus case filed by a state prisoner, the final judgment was entered and certificate of appealability was denied on July 8, 2021. Therefore, the final day for filing a timely notice of appeal was Monday, August 9, 2021, because the thirtieth day was a Saturday. *See* FED. R. APP. P. 26(a)(1)(C). Petitioner pro se filed two notices of appeal. The earlier notice is not dated, postmarked February 22, 2022 and stamped as filed on February 28, 2022. The later notice is not dated, postmarked April 18, 2022 and stamped as filed on April 21, 2022. Because the notices of appeal are postmarked February 22, 2022 and April 18, 2022, they could not have been deposited in the prison's mail system within the prescribed time. *See* FED. R. APP. P. 4(c)(1) (prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988).

Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are DENIED.