

CAUSE No. _____

22-6241

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

CLARENCE LEE HOOKER
PETITIONER

VS.

BOBBY LUMPHIN, DIRECTOR
TEXAS DEPARTMENT OF CRIMINAL JUSTICE - ID.
RESPONDENT

PETITION
FOR
WRIT OF CERTIORARI

ORIGINAL

CLARENCE LEE HOOKER
TDCJ-ID #01915508
JOHN M. WYNNE LINES
810 FM 2821
HUNTSVILLE, TEXAS
77349

QUESTIONS PRESENTED

- (A). DID THE FIFTH CIRCUIT COURT OF APPEALS ERROR BY DENYING THE PETITIONER'S CERTIFICATE OF APPEALABILITY STATING HIS USC § 2254 APPLICATION WAS BARRED BY THE ONE-YEAR STATUTE OF LIMITATIONS?
- (B). DID THE FIFTH CIRCUIT COURT OF APPEALS ERROR BY AGREEING WITH THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS IN CAUSE NO: 5:19-CV-19 THAT IT DETERMINED PETITIONER'S CLAIMS WERE MERITLESS?
- (C). DID THE FIFTH CIRCUIT COURT OF APPEALS ERROR BY STATING PETITIONER DID NOT ADDRESS WHETHER REASONABLE JURIST COULD DEBATE THE DISTRICT COURT'S RULING, STATING HE FAILED TO MAKE THE REQUIRED SHOWING?

ADDITIONALLY, PETITIONER ASSERTS INFRA HIS CONSTITUTIONAL CLAIMS GUARANTEED BY THE U.S. CONST. AND FURTHER STATES HE IS NO SKILLED ATTORNEY NOR A TRAINED PARALEGAL AND ONLY THRU DUE DILIGENCE HAS HE BEEN ABLE TO ASSERT PREVIOUS AND PRESENT CLAIMS ON HIS BEHALF THROUGHOUT HIS PROCEDURAL FILINGS.

FURTHER, THE RECORDATION OF PETITIONER'S RECORD'S SEEM TO BE SILENT TO HIS ACTUAL CONSTITUTIONAL CLAIMS OF "UNREASONABLE APPLICATION" OF THE LOWER COURT'S RULINGS, PETITIONER AVERS THE INSTANT CLAIMS WERE ADDRESSED ENTIRELY IN HIS LOWER COURT'S FILINGS, BUT SUBSEQUENTLY THE 5TH CIRCUIT DOES NOT ADDRESS THESE CLAIMS ASSERTED BY PETITIONER, CLEARLY AN ATTEMPT TO CLARK AND DAGGER HIS MERITORIOUS CONSTITUTIONAL CLAIMS, VIOLATING HIS CONSTITUTIONALLY PROTECTED RIGHTS UNDER THE 4TH, 5TH, 6TH & 14TH AMENDMENTS. THIS COURT SHOULD AGREE HENCE FORTH HIS CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED, AS PETITIONER WILL SHOW AS FOLLOWS:

CLAIMS OF ACTUAL INNOCENCE CAN LEAP THE HIGH HURDLE IT TAKES TO CROSS THE THRESHOLDS OF THE A.E.D.P.A. TOLLING PROCEDURES, PETITIONER WILL CITE NOT ONLY § 2254(d)(2), THAT HIS CASE RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS ALSO § 2254(2)(B) THE FACTS UNDERLYING HIS CLAIMS WOULD BE SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT BUT FOR CONSTITUTIONAL ERROR, NO REASONABLE FACT-FINDER WOULD HAVE FOUND THE PETITIONER GUILTY OF THE UNDERLYING OFFENSE, BUT ALSO CITES, WILLIAMS-V-TAYLOR 529 US 362, IT STATES THE QUESTIONS PRESENTED AS IN HOOKER'S CASE, ARE WHETHER TERRY WILLIAMS' CONSTITUTIONAL RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AS DEFINED IN STRICKLAND, 466 US 668 WAS VIOLATED, AND WHETHER HIS ALONG WITH HOOKER'S SENTENCE WAS CONTRARY TO, OR INVOLVED AN "UNREASONABLE APPLICATION" OF CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE US SUPREME COURT WITHIN THE MEANING OF 28 USC § 2254(d)(1), THE COURT ANSWERS BOTH QUESTIONS AFFIRMATIVELY, PERSONS WHO FACE INCARCERATION MUST NOT BE CALLED TO DEFEND THEMSELVES WITHOUT ADEQUATE LEGAL ASSISTANCE; CUYLER-V-SULLIVAN, 446 US 335, PETITIONER/HOOKER HAS DEMONSTRATED CAUSE TO HAVE THIS COURT TO REVIEW HIS CLAIMS BARRED AND CAN DEMONSTRATE CAUSE FOR THE TIMELINESS DEFAULT ACTUALLY PRESUMING HIM AS A RESULT OF THE ALLEGED VIOLATION OF FEDERAL LAW, OR DEMONSTRATE THAT FAILURE TO CONSIDER HIS CLAIMS WILL RESULT IN A FUNDAMENTAL MIS-CARRIAGE OF JUSTICE.

PETITIONER CONTINUES TO STATE THIS VERY COURT SHOULD REVIEW A QUESTION OF FEDERAL LAW THAT WAS DECIDED BY HIS STATE COURT'S DECISION BECAUSE THE COURT RESTS ON A STATE LAW GROUND WAS INDEPENDENT OF THE FEDERAL QUESTION AND DOES NOT ADEQUATELY SUPPORT HIS JUDGMENT. THIS RULE APPLIES WHETHER THE STATE LAW GROUND IS SUBSTANTIVE OR PROCEDURAL THEREFORE "UNREASONABLE APPLICATION" WAS RAMPANT DURING PETITIONER'S

PROCEEDINGS, AND AGAIN PETITIONER BY INFORMING THIS COURT DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL, NO FAULT OF HIS OWN WAS ACTUALLY PREJUDICED AS A RESULT OF THE ALLEGED VIOLATIONS OF FEDERAL LAW AND ALSO AGAIN HAS DEMONSTRATED THAT FAILURE TO CONSIDER HIS CLAIMS WILL RESULT IN A FUNDAMENTAL MIS-CARRIAGE OF JUSTICE. SEE: COLEMAN-V-THOMPSON, 501 US 722, ONE CASE INWHICH ALSO APPLIES DIRECTLY TO PETITIONERS IS THAT OF TREST-V- WURLEY, 94 F3d 1005, WHICH COMES OUT OF THE 5TH CIRCUIT COURT, IN THIS CASE TREST APPEARED TO THE 5TH CIRCUIT WHICH RULED AGAINST HIM ON GROUNDS OF PROCEDURAL DEFAULTS IN HIS PETITION FOR HABEAS CORPUS, TREST POINTED OUT THAT THE COURT OF APPEALS HAD RAISED AND DECIDED THE QUESTION OF "PROCEDURAL DEFAULT" SUA SPONTE, THE PARTIES THEMSELVES HAD NEITHER RAISED NOR ARGUED THE MATTER... TREST CONSEQUENTLY ASKED THIS COURT TO DECIDE WHETHER A COURT OF APPEALS REVIEWING A DISTRICT COURT'S HABEAS CORPUS DECISION "IS REQUIRED TO RAISE... SUA SPONTE" A PETITIONER'S POTENTIAL PROCEDURAL DEFAULT, PRECEDENT MAKES CLEAR AS IN HOOKER'S INSTANT CASE THAT THE ANSWER TO THE QUESTION PRESENTED IS "NO") A COURT OF APPEALS IS NOT "REQUIRED" TO RAISE THE ISSUE OF PROCEDURAL DEFAULT SUA SPONTE..

PETITIONER IS RESPECTFULLY REQUESTING THIS US SUPREME COURT FIRST ADDRESS ALL NOW DEFAULTED CLAIMS FOR COMPARABLE RELIEF AND OTHER GROUNDS FOR CAUSE TO EXCUSE HIS PROCEDURAL DEFAULTS, STATING FUNDAMENTAL FAIRNESS.

RECALL HOOKER'S CLAIMS FOR THE MOST PART THAT WERE USUAL TO HIS INNOCENCE WERE KEPT FROM THE JURY'S CONSIDERATION, IN BASTIEN-V-DRAGONTEU, 128 Fsupp 2d 204 "QUOTE" FUNDAMENTAL MIS-CARRIAGE OF JUSTICE BASIS ON WHICH TO ALLOW FEDERAL COURT TO CONSIDER CHALLENGE TO CONVICTION THAT CANNOT BE PRESENTED TO STATE COURT'S IS INTENDED FOR TRULY EXTRAORDINARY CASES SUCH AS HOOKER'S INWHICH THERE IS A SHOWING OF ACTUAL INNOCENCE BY PETITIONER.

SUCH A CASE AS HOOKER'S ABSENT ALLEGED CONSTITUTIONAL ERROR, IT WAS MORE LIKELY THAN NOT THAT NO REASONABLE JURY WOULD HAVE FOUND PETITIONER GUILTY AS CHARGED.

UNDER FEDERAL HABEAS FILING DEADLINES, PETITIONER WILL BE BRIEF AND CONCISELY STATE THAT HIS TIMELINESS SHOULD BE EXCUSED DUE TO THE FACTS SUPPORTING HIS CLAIMS COULD NOT HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF HIS DUE DILIGENCE, AND IN SUPPORT WILL CITE LARSEN-V-SOTO, 730 F3D 929, THIS COURT HELD PETITIONER'S CLAIMS COULD BE CONSIDERED ON THEIR MERITS DESPITE THE FACIAL UNTIMELINESS OF HIS PETITION ON THE GROUNDS THAT THE PETITIONER PRESENTED COMPELLING EVIDENCE THAT HE IS ACTUALLY INNOCENT, AS HOOKER DOES THROUGHOUT THIS FILING. THE FIFTH CIRCUIT IN CONCLUSION DID ERROR BY DENYING PETITIONER'S CERTIFICATE OF APPEALABILITY AS TIME BARRED AS DISCUSSED SUPRA AND WILL CONTINUE TO INTRA.

PETITIONER ASSERTS IN SCHUP-V-DELO, 513 US 299, THAT HE WAS ALSO DEPRIVED OF HIS CONSTITUTIONAL RIGHTS WHICH THE COURT WITHHELD EVIDENCE EXCULPATORY TO HIS DEFENSE, SUCH AS EVIDENCE OF OTHERS GUILTY. HE WAS DENIED A FULL PANOPLY OF PROTECTION AFFORDED TO CRIMINAL DEFENDANTS BY THE CONSTITUTION. HOOKER'S CASE FALLS WITHIN THE "NARROW CLASS OF CASES" IMPLICATING A FUNDAMENTAL MIS-CARRIAGE OF JUSTICE. SCHUP'S CLAIM OF INNOCENCE DOES NOT BY ITSELF PROVIDE A BASIS FOR RELIEF, INSTEAD HIS CLAIM FOR RELIEF DEPENDS CRITICALLY ON THE VALIDITY OF HIS STRICKLAND AND BRADY CLAIMS. SCHUP'S CLAIMS ARE A GATEWAY THROUGH WHICH A HABEAS PETITIONER MUST PASS TO HAVE HIS OTHERWISE BARRED CONSTITUTIONAL CLAIMS CONSIDERED ON THEIR MERITS. SEE: HERRERA, 506 US @ 404. IN CONCLUSION HOOKER CASE HAS MERIT AND HE HAS COLLECTIVELY SHOWN SAID MERIT.

MOVING ON PETITIONER WILL ASSERT "UNREASONABLE APPLICATION" AND THAT CLEARLY ESTABLISHED LAW AS DETERMINED BY THIS COURT "REFER" TO THE HOLDINGS, AS OPPOSED TO THE DICTA, OF THIS COURT'S DECISIONS AS OF THE TIME OF THE RELEVANT STATE-COURT DECISION, WILLIAMS-V-TAYLOR 529 US 362. WE LOOK AS THIS COURT SHOULD FOR THE GOVERNING LEGAL PRINCIPLES SET FORTH BY THE U.S. SUPREME COURT AT THE TIME THE STATE COURT RENDERS ITS DECISIONS. THERE IS IN HOOKER'S CASE A CONSPICUOUS MIS-APPLICATION OF SUPREME COURT PRECEDENT THAT MADE THE STATE COURT'S DECISION "CONTRARY TO CLEARLY ESTABLISHED LAW; THE PROPER QUESTION IS WHETHER THERE WAS "ANY REASONABLE ARGUMENT" THAT THE STATE COURT'S JUDGMENT IS CONSISTENT WITH HOOKER'S STRICKLAND AND BRADY CLAIMS. THE STATE COURT COULD NOT REASONABLY CONCLUDE THAT PETITIONER WAS NOT PRESUMED BY HIS COUNSEL'S PERFORMANCE. PETITIONER'S CLAIMS OF UNREASONABLE APPLICATION ARE DUE TO THE COURT'S INDEPENDENT REVIEW OF THE RECORD AND PERVIOUS FEDERAL LAW THAT RESULTED IN CONTRAVENES AND UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW BASING ITS UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED.

PETITIONER SHOWS AS FOLLOWS:

THIS COURT SHOULD IDENTIFY THE CORRECT LEGAL PRINCIPLE THAT HOOKER HAD DEMONSTRATED A REASONABLE PROBABILITY THAT THE WITHHELD EVIDENCE WOULD/COULD HAVE LED TO A DIFFERENT RESULT - THE STATEMENTS OF THE STATE COURT REQUIRED THAT HOOKER PROVE THE EVIDENCE WOULD HAVE ESTABLISHED HIS INNOCENCE. PLACING THAT BURDEN ON HOOKER WAS CLEARLY DRASTICALLY DIFFERENT, THAN THE CLEARLY ESTABLISHED PRINCIPLE Laid OUT IN KYLES, 514 US 440. WHEN A COURT'S OPINION REPEATEDLY DISMISSES "PARTICULAR ITEMS OF EVIDENCE AS IN HOOKER'S CASE AS IMMATERIAL IT SUGGEST THAT CUMULATIVE MATERIALITY IS NOT THE TOUCHSTONE.

PETITION FOR WRIT OF CERTIORARI

I CLARENCE LEE HOOKER, PETITIONER AND ACTING PRO-SE RESPECTFULLY PRAY THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT AND OPINION.

ISSUED BY THE LOWER COURTS AND BY THE 5TH CIRCUIT COURT OF APPEALS IN DENYING THE RIGHT TO A CERTIFICATE OF APPEALABILITY.

OPINIONS BELOW

A COPY OF AUGUST 5, 2022 FINAL DENIAL BY THE 5TH CIRCUIT COURT OF APPEALS.

THE REQUEST THAT PETITIONER'S CERTIFICATE OF APPEALABILITY BE DENIED BY THE UNITED STATES DISTRICT COURT - NORTHERN DISTRICT OF LUBBOCK, TEXAS. SIGNED BY THE HAND OF JUDGE JAMES WESLEY HENDRIX - DATED - NOVEMBER 16, 2021.

JURISDICTION

THIS HONORABLE COURT INVOKES JURISDICTION UNDER 28 U.S.C. SECTION 21.01(c).

STATEMENT OF CASE

THE PETITIONER HAS BEEN DENIED THE RIGHT TO FILE HIS APPEAL BY THE 5TH CIRCUIT COURT OF APPEALS.

PETITIONER'S DENIAL STATES THAT THE COURT OF CRIMINAL APPEALS CONCLUDED THAT HIS C.O.A. BE DENIED AS UNTIMELY AS WAS THE DISTRICT COURT'S ORDER. ALSO PETITIONER'S CLAIMS ARE WITHOUT MERIT. MR. HOOKER WAS CONVICTED OF MURDER IN STATE COURT OF LUBBOCK COUNTY, TEXAS.

HE WAS DENIED HIS RIGHTS TO A FULL HEARING IN FEDERAL COURT UNDER CULLEN-V-PINOLISTER, SECTIONS 2254(d)(5), AND CONTINUES TO ASSERT THE DISTRICT COURT AND 5TH CIRCUIT COURT OF APPEALS RULED AS TO "UNREASONABLE APPLICATION" STANDARDS... ALL THREE OF THE CITES CLEARLY ESTABLISHED FEDERAL LAW...

REASONS FOR GRANTING WRIT

HERE IT IS PLAIN AND SIMPLE, FOR ALL TO SEE MR. HOOKER WITHIN THIS WRIT HAS SHOWN CONSISTENTLY THAT OTHERS WERE MORE THAN MERELY SUSPECTS, EVEN STATES DNA EXPERTS TESTIMONIES REVEALED MR. HOOKER'S ASSERTIONS. HE IS CHALLENGING THE EVIDENCE AND ITS UNREASONABLE APPLICATION TO THE STATES RIGHT TO PUNISH HIM AND THE LEGITIMACY OF PUNISHMENT IS INEXTRICALLY ENTWINED WITH GUILT.

A CAREFUL REVIEW OF ALL STATE'S EXPERT WITNESS' (DNA) AND CRIME SCENE INVESTIGATIONS AND THE VERY FACT THE CASE WENT UNSOLVED FOR MANY YEARS, WITHOUT A POSITIVE LINK TO ANY DEFINITE SUSPECT, IT WOULD BE A MIS-CARRIAGE OF JUSTICE FOR THIS COURT, NOT TO REMAND THIS CASE BACK TO THE 5TH CIRCUIT TO INVESTIGATE FURTHER ISSUES PRESENTED.

MR. HOOKER / PETITIONER'S RECORDS INCLUDE INVESTIGATIVE RECORDED OF MANY FORMS OF EVIDENCE LOCATED WITHIN THE CRIME SCENES LOCATION AND ALSO FURTHER IMPLICATIONS OF OTHER SUSPECTS WHICH DNA ANALYSIS UPON TESTING INCULCATED THEM. DNA TESTING REVEALED THE CIGARETTE BUTT FOUND IN THE VERY ROOM, SOME INCHES AWAY FROM THE VICTIM'S BODY WAS INDEED THAT OF KELLY McDOWELL, A INDIVIDUAL KNOWN TO FREQUENT THE DECEASED'S HOME... AND TO MENTION A BLOODY BUTCHER KNIFE WAS ALSO FOUND BESIDE OF THAT. THE DNA FOUND ON THE KNIFE WAS ATTRIBUTABLE TO MORE THAN ONE CONTRIBUTOR. THE ONLY INFORMATION CAME TO THE ATTENTION OF THE INVESTIGATING OFFICER INDICATIVE OF MR. HOOKER WAS CALLS FROM HIS MOTHER'S HOME FOUR DAYS PRIOR TO THE INCIDENT, MR. HOOKER WAS RESIDING AT HIS MOTHER'S HOME, AND THIS IS IN NO WAY EVIDENCE MR. HOOKER WAS THE ACOR/CULPRIT... ANOTHER SUSPECT NAMELY KENNETH MCGEE WHO INDEED HAD A RELATIONSHIP WITH THE DECEASED WAS A IMMEDIATE SUSPECT AND HAD MOTIVE TO KILL THE VICTIM, HE WAS ALSO IN ATTENDANCE

OUTSIDE THE VICTIMS HOME THE NIGHT HER BODY WAS FOUND AND KNEW OF HER DEATH BEFORE THE MEDIA EVEN RELEASED THEIR REPORT. ALSO MCGEE'S MODUS OPERANDI WAS STABBING HIS VICTIMS HE HAD PREVIOUSLY STABBED ANOTHER INDIVIDUAL IN ANOTHER STATE PRIOR TO THIS INCIDENT IT WAS ALSO KNOWN THROUGH TESTIMONY OF MCGEE'S SON THAT MCGEE WAS A CRACK-COCAINE ADDICT AND THAT HIS FATHER WAS EAGER TO GET THE VICTIM OUT OF THE RENTED HOME MCGEE OWNED AND RENTED TO HER. MCGEE'S VERY OWN SON WAS CONCERNED HIS FATHER MAY HAVE HAD INVOLVEMENT IN THE VICTIMS DEATH. ALL THIS EXCULPATORY EVIDENCE WAS OBJECTED TO AT COURT. MR HOOKER'S DNA PROFILE (ANALYSIS) ONLY CONCLUDED HE "COULD" NOT BE EXCLUDED, NO POSITIVE RESULTS THAT LINKED PETITIONER/HOOKER TO THE OFFENSE AS CHARGED...

THE COURTS AT ALL LEVELS GOT IT ALL WRONG, THEY DID NOT APPLY U.S. SUPREME COURT RULINGS TO THEIR "UNREASONABLE APPLICATIONS" OF PRECEDENT AND ESTABLISHED APPLICATIONS OF LAW...

CONCLUSION

FOR THESE REASONS SET FORTH ABOVE, A WRIT OF CERTIORARI SHOULD ISSUE TO REVIEW THE JUDGMENT AND OPINIONS OF THE FIFTH CIRCUIT COURT OF APPEALS, - AUSTIN, TEXAS'S COURT OF CRIMINAL APPEALS, THE 364TH DISTRICT COURT OF LUBBOCK, TEXAS AND HIS COURT OF APPEALS DECISION TO INCLUDE THE U.S DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ORDERS...

PRAYER

PETITIONER, WHEREFORE, PREMISES, CONSIDERED, PRAYS THIS HONORABLE COURT AGREE WITH HIS FACTS PRESENTED WITHIN THIS INSTANT PETITION FOR RELIEF AND A WRIT OF HABEAS CORPUS.

IT IS SO PRAYED.

Clarence Lee Hooker
Pro Se

UNSWORN DECLARATION

I, THE UNDERSIGNED, SWEAR UNDER THE PENALTY OF PERJURY THAT THE FOREGOING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND HIS WRIT OF HABEAS CORPUS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Clarence Lee Hooker
CLARENCE LEE HOOKER

CERTIFICATE OF SERVICE

I, CLARENCE LEE HOOKER / PETITIONER DO HEREBY STATE ON THE 20 DAY OF Sept 2022 THAT I HAVE PLACED A COPY OF THE ABOVE INSTRUMENTS IN THE U.S. MAIL TO THE INTERESTED PARTY LISTED BELOW..

SCOTT MORRIS / CLERK
U.S. SUPREME COURT
1 FIRST STREET, N.E.
WASHINGTON, DC. 20543-001

EDWARD L. MAXWELL, ATTY GEN. OFFICE
POSTCONVICTION DIVISION
P.O. Box 12548
AUSTIN, TEXAS 78711

Clarence Lee Hooker

CERTIFICATE OF COMPLIANCE

ALTHOUGH NOT COMPUTER GENERATED NOR TYPED,
THE WORD COUNT OF PETITIONER'S WRIT OF HABEAS CORPUS
CONSIST OF 2548 WORDS RESPECTFULLY ENTERED FOR
THIS COURT'S CONSIDERATION.

RESPECTFULLY,

Clarence Lee Hooker

CLARENCE LEE HOOKER

TDOS-SD # D1915508

JOHN M. WYNNIE LINES

810 FM 2821

HUNTSVILLE, TEXAS

77349