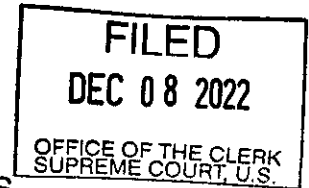


No. **ORIGINAL**
22-6438



IN THE
SUPREME COURT OF THE UNITED STATES

Tommie Claiborne (pro-se) — PETITIONER
(Your Name)

vs.

State of Mississippi — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Mississippi Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tommie Claiborne
(Your Name)

P.O. Box 1889
(Address)

Woodville, M.S. 39669
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Ineffective Assistance of Counsel for failing to exercise the rights to challenge a juror for cause or peremptory challenge purposes which is in violation of the sixth amendment of the US Constitution

Ineffective Assistance of Counsel for failing to produce transcripts of jury voir dire or designating them to the petitioner in adequate time to properly file the grounds to jury misconduct of ineffective assistance of counsel which is presented in this writ of Certiorari, on direct appeal or post conviction relief proceedings

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

~~State of Mississippi v. Tommiel Claiborne~~
In The Mississippi Supreme Court Case# 2016-M-00519
Motion For Leave to proceed to file post conviction Relief Denied on August-2-2022
Motion for Rehearing denied on September-19-2022 Case Caption Tommiel Claiborne
Vis State of Mississippi

Tommiel Claiborne Vis State of Mississippi, NO. 2016-M-00519, Mississippi Supreme
Court, Judgement entered September-19-2022.

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APPENDIX F	Mississippi Supreme Court order denying Motion for Rehearing and motion for leave to proceed in trial Court Order of denial Motion for leave to file post conviction writ Motion for leave to file post conviction writ Motion for leave to file post conviction writ

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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 _____ 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 _____ to the petition and is

- ☐ reported at _____; 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 F to the petition and is

- ☒ reported at Mississippi Supreme Court; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Mississippi Supreme Court court appears at Appendix F to the petition and is

- ☒ reported at Mississippi Supreme Court; 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 _____.

☐ 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: _____, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 08-2-2022.
A copy of that decision appears at Appendix F.

☒ A timely petition for rehearing was thereafter denied on the following date: 09-19-2022, and a copy of the order denying rehearing appears at Appendix F.

☐ 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

Const 1890 sec 26

Sixth ammendment of the U.S Constitution

U.S Constitution 5th ammendment

Mississippi Constitution article 3 section 14

American Bar Association Standards Relating to Trial Judge sec 2.5

(Issue one)

Statement of Case

This Case was appealed on direct appeal after a jury verdict of Guilty of first degree murder. The Petitioner was sentenced in the Claiborne County circuit Court to serve a term of life without Parole on May-6-2014. This Conviction was denied on direct appeal and affirmed by the Mississippi Supreme Court on 08-20-2015. A rehearing was filed and denied on 11-5-2015. A Motion for post conviction relief was filed on 04-2-2016 and denied on 04-20-2016. A Second motion was filed with the Mississippi Supreme Court asking for leave to Proceed in the trial Court on out of time Post Conviction Relief as it Pursuits to M.C.A of 1972 Sec 99-39-27. This second motion was denied on 08-2-2022 a rehearing was filed and denied on 09-19-2022. The Second motion asking the Mississippi Supreme Court for leave to Proceed in the trial Court is the one in question in this writ of Certiorari. The Petitioner argues that the decision of the lower Court is unreasonable and ask this Court to reverse the decision of Mississippi Supreme Courts denial of Petitioners Motion for leave to Proceed in the trial Court. In The Petitioners Motion he argued that his attorney was ineffective for failing to question the jury with references to Peremptory Challenge or challenge for cause. The Petitioner argues that if his attorney would have questioned the jury with references to strike a juror that he could have exercised the right to intelligently challenge a juror. Doing the voir dire examination of the jury there where two jurors who stated that they where related to the head investigations Officer of the case that this jury where on duty to make a decision on. These Two Jurors responded to being related to the head investigating officer who's name is Calvin Jackson. After being asked the question by the Petitioners attorney that question was (is anybody in here related to any law enforcement officers here in the County?). The two Juror's who responded to being related to the head investigating officer names are Shanella Fortenberry and Carolyn Hill. After these two jurors responded about them being related to the head investigations officer the Petitioner's attorney never asked any follow up questions to see what this relation could have been or was it residential related or blood related. These follow up questions could have assisted the Petitioner or his attorney on making a intelligent decision of whether these two Juror's should be removed for race neutral reasons. By the Petitioners attorney failing to ask these follow up questions is a violation of the Petitioners right to select a fair and impartial jury. The Petitioners attorney actions of not properly investigating the jury for race neutral reasons and bias was ineffective under the Strickland Vs Washington 466 U.S 668 Case clause. if it was not for the Petitioners attorney failing to investigate these Jurors with references deprived the Petitioner the right to have a trial in good faith of a impartial jury.

Hypothetically using the cited case *Odom v. State*, 355 So.2d 1381 (1978)*1383. Stating (The question with which we are presented here is whether appellant must demonstrate prejudice resulting from such impairment before he is entitled to a new trial. In *Jones v. State*, 133 Miss. 684, 98 So. 150 (1923) we held that counsel must have latitude in searching the minds and consciences of jurors in order to be able to exercise their peremptory challenges intelligently. Although that case dealt with denial of the statutory right of a defendant to question prospective jurors directly and not have to propound question through the presiding judge, the principle announced is applicable in the case sub judice the failure of a juror to respond to a relevant, direct and unambiguous question leaves the examining attorney uninformed and unable to ask any follow up questions to elicit the necessary facts to intelligently reach a decision to exercise a peremptory challenge or to challenge a juror for cause. Therefore, we hold that where as here a prospective juror in a criminal case fails to respond to a relevant, direct and unambiguous question presented by defense counsel on voir dire, although having knowledge of the information sought to be elicited, the trial court should, upon motion for new trial, determine whether the question propounded to the voir dire jurors was (1) relevant to the voir dire examination; (2) whether it was unambiguous and (3) whether the juror had substantial knowledge of the information sought to be elicited. If the trial court determinations of these inquiries is in the affirmative, the court should then determine if prejudice to the defendant in selecting a jury reasonably could be inferred from the juror's failure to respond. If prejudice reasonably can be inferred then a new trial should be ordered. It is, of course, a judicial question as to whether a jury is fair and impartial and the court's judgment will not be disturbed unless it appears clearly that it is wrong. *Jones v. State*, 133 Miss at 711-13, 98 So. 150. We do not suggest how this may be proved as that question was not raised or briefed. However the general rule is that a juror may not testify to impeach a verdict rendered by them. *Ratliff v. Nail* 231 So.2d 798 (Miss 1970). If the petitioner argues that how can a juror respond to a question that was never asked by the petitioner's attorney, the follow up question to what the relationship was between these two jurors and the head investigating officer Calvin Jackson, and their feelings in that regard, could have been used to determine whether or not to strike these two jurors. It also states in *Odom v. State*, 355 So.2d 1381 (1978)*1383 it is readily evident that no firm unbending rule can be laid down that would control every situation that might arise on the voir dire of prospective jurors. Therefore each case must be decided on an ad hoc basis considering the facts then before the courts. See Page 41 line 8 to line 23 of The Transcripts of the jury voir dire examination as appendix (A) of this writ to see where juror Shaneka Fortenberry responded to being related to Calvin Jackson the head investigating officer but the petitioner's attorney never asked anything concerning

What's the relationship or how close related is she to the head investigating officer also see Page 42 line 17 to Page 43 line 4 of the jury voir dire transcript as appendix (A) To see that Juror Carolyn Hill responded to being related to the head investigating officer Calvin Jackson but the Petitioners attorney failed to ask what is the relationship and how close is this relationship.

Law 1922 (C, 294) Giving to the Parties in a jury trial or their attorneys the right to question jurors being impaneled with reference to challenge for Cause or Peremptory Challenge and making it unnecessary to propound such question to the Presiding Judge, held Constitutional as against contention that it deprives the court of its inherent Power in view of Const. 1890 sec 26 the statute being merely a statute of Procedure says House v. State (Miss 1923) 13 Miss 675, 98 So. 156 Constitutional law. By the Petitioners attorney failing to question the two Jurors Shaneka Fortenberry and Carolyn Hill with references is held unconstitutional in violation of Const 1890 sec 26. Which this also violates the U.S Constitution the Sixth amendment right to effective assistance of Counsel and rights to be tried in the presence of a impartial jury. The facts presented in Odoms case as described in Odom v. State 355 So. 2d 1381 (1978)* 1383 There is a strong inference of prejudice to defendant in his selection of a jury. as any astute lawyer would have examined the juror with close references to the juror being the brother of a police officer and his feelings in that regard. The key saying of this is that any astute lawyer would have examined a juror closely with references to the juror being the brother of a police officer, which the Petitioners attorney did not show any astute when it came to asking Jurors Shaneka Fortenberry and Carolyn Hill with references to being related to the head investigating officer.

(Issue Two)

At the direct appeal process of this case the Petitioner attorney failed to produce documents of the jury voir dire or the jury selection to the Petitioner for review purposes to timely be able to file a direct appeal concerning juror voir dire examination misconduct. The Petitioner direct appeal was filed indigent and a motion designating of the records were filed by the Petitioners attorney on May-23-2014 but this motion did not specify that the jury voir dire and jury selection were requested to be designated so I never received these documents of a jury voir dire doing the direct appeal process of the record designation. I then noticed that the jury voir dire and selection was not apart of the record that I received so I wrote and asked the attorney that I the petitioner was appointed concerning receiving these records. That's when the Petitioner attorney filed a second motion requesting Designation of the record on

(6) August-22-2014 which in this motion petitioner attorney requested

that the Jury Vior dire be designated but I the Petitioner still never received these documents of the Jury vior dire and selection. See Appendix (B) Which are the Index to the transcripts that I first received from my attorney doing direct appeal Procees of this case and it do not have a Jury vior dire or selection in this index. Also see Appendix (A) Page 2 line 6 to line 10 which shows that a Jury vior dire and selection has been added to this newly discovered transcript that was Purchwed BY the Petitioner for the Price of \$1,65.00 and was received by the Petitioner March-2-2022 as Public information. See appendix(C) to see Correspondant from Court Reporter Theresa Lumely to show Proof that I just received this transcript on 03-2-2022, also see appendix(D) to see both of the Petitioners attorney motion to designate the record that where filed at direct appeal Procees of this case, appendix(D) I the Petitioner argue that failure of the Petitioner attorney to ensure that Petitioner had a full and accurate copy of all Proceedings of the case on direct appeal was a violation of Griffin V/S Illinois 351 U.S 12 (1956) which gives all indigent appellees the right to have access to all Preceedings of the case up for appeal given the appellee adwate appeal review of the issues being raised on appeal, By the Petitioner attorney failing to Produce these records was ineffective assistance of Counsel this attorney for the Petitioner acted under a conflict of interest and his intrest where to keep the ground of ineffective assistance of Counsel for failing to ask the Jury vior dire follow up questions as argued in issue one from being raised at the direct appeal stage of this case. This attorney for the Petitioner self interest was to protect his career as a attorney. As Proof a conflict of intrest did exist see Petitioners request to fire his attorney and the Petitione ~~not~~ attorney motion to withdraw from representation of the Petitioner as ~~well~~ appendix(E) By these two motions shows that attorney and the Petitioner had conflict but the circuit court Judge denied both motions and forced the defendant and his attorney to go to trial with a conflict of intrest.

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This was out of my control and I couldn't receive the records of my vior dire on time to timely file ~~my~~ motion, I had to obtain these transcripts to properly file for Post Conviction relief. Which on my first time receiving these records I was charged for them. By law I ^{should} ~~be~~ to be entitled to one free copy of all transcripts to all proceedings. But instead I was charged \$165.00 to receive these transcripts of the jury vior dire. In the fisher v. S. state, 532 So. 2d 992 (Mississippi, 1988) The Mississippi Supreme Court discussed a claim that Britt required a transcript of prior proceedings to be provided. While holding that there is no need to provide prior transcripts from an unrelated case, the court held that there can be no doubt that the state must provide an indigent with a transcript of prior proceedings when that transcript is needed. By my attorney not requesting for these first free copy of the transcript doing the direct appeal process of my case or the office of indigent appeals not requesting these records denied me a fundamental right of due process Under U.S Constitution 5th ammendment and mississippi constitution article 3 section 14. Also the circuit court judge Lamar Pickard acted with judicial misconduct and not allowing me to receive these transcripts on my request, which also violated me a fundamental right to due Process under U.S Constitution 5th ammendment and Mississippi Constitution article 3 section 14. In light of the judge role as arbitrator of the accused's constitutional right to a fair trial the duty to ensure the complete recordation of the case also rest with the court. See (U.S. Vs. Garner, 581 F.2d 481 (5th cir. 1978)); The trial judge has a duty to see that the reporter makes a true, complete and accurate record of all proceedings, American Bar Association, Standards Relating to trial judge section 2.5 (1972) (emphasis added). There is a presumption of prejudice which arises when the indigent (petitioner) is denied his right to a free transcript, of U.S. Vs. Selva 559 F.2d 1363, 1366 (5th cir. 1977). In Britt Vs. North Carolina, 404 U.S. 226, 227, 92 S. Ct 431, 437, 30 L Ed. 2d 460 (1971), the U.S. Supreme Court held that "a defendant who claims the right to a free transcript does not bear the burden of proving inadequate such alternatives as may be suggested by the state or conjured up by a court. See (State vs. England, 363 SE 2d 725, 728 (W. Va. 1987) (quoting Britt, 404 U.S. at 236) see also State vs. Robinson, 387 So. 2d 1143, 1144 (La. 1980); State vs. LeBlanc, 367 So. 2d 335, 337 (La 1979); State vs. Jones, 351 So. 2d 1194, 1196 (La 1977); State vs. Ford, 338 So. 2d 107, 109 (La 1976); U.S. vs Brumley, 560 F.2d 1268, 1280 (5th cir. 1977); U.S. vs. Upshaw, 448 F.2d 1218, 1223 (5th cir. 1971); U.S. vs. Garcia Bonifascio, 443 F.2d 914, 915 (5th cir. 1971).

REASONS FOR GRANTING THE PETITION

I The petitioner urges this Court to Grant this Petition do to the attorney who represented the petitioner was ineffective and if it wasn't for his actions there would have been a different result in the outcome of the verdict of the jury. Do that the attorney not exercising the latitude that the court requires in examining the minds of the jury to be able to intelligently reach a decision to pick a impartial jury violated the petitioners right to a fair trial by a impartial decision maker. By the petitioner not being allowed the right to intelligently exercise his right to challenge the jurors in question this violate the Sixth ammendment of the US Constitution rights to effective assistance of counsel and rights to have a trial in the presents of a impartial jury. Also because this petitioner was denied a right to appeal do to not being supplied with the transcripts of the jury vibr due to properly perfect appeal review on the grounds presented in this writ of certiorari,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jammmiel Claiborne

Date: _____